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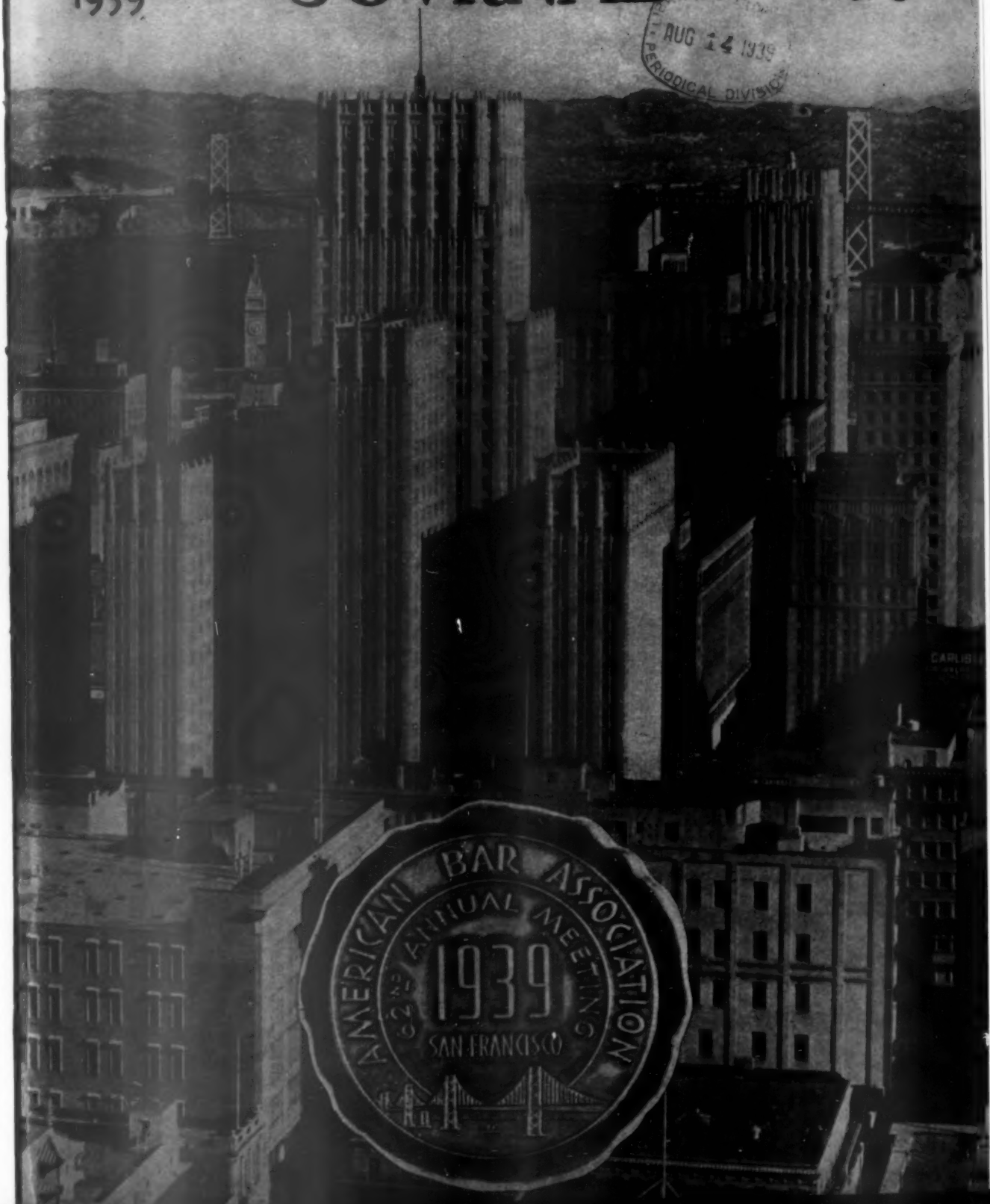

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IMPORTANT SHIFTS IN CONSTITUTIONAL DOCTRINES

Term of Supreme Court Just Ended Will Undoubtedly Rank as One of the Most Momentous in Its History because of Destruction of Constitutional Limitations on Federal Power and Unprecedented Expansion of That Power Over the Everyday Affairs of Individual Citizens—Leading Cases Illustrating Recent Shifts in Court's Position as to Tax on Compensation of Federal Judges, the Doctrine of Inter-Governmental Immunity from Taxation, and the Federal Power under the Interstate Commerce Clause—Reliance against Exercise of Arbitrary Power Must Henceforth be Placed Mainly in the Legislative Department of the Government —Speaker Declares Views Are His Own and not to Be Attributed to the Association, etc.*

HON. FRANK J. HOGAN
President of the American Bar Association, 1938-39

THE October, 1938, term of the Supreme Court of the United States ended one month and five days ago. That term will undoubtedly rank as one of the most momentous in the history of the Court. During it, to borrow the language of Mr. Justice Frankfurter in one of his concurring opinions, important shifts in constitutional doctrines were "announced after a reconstruction in the membership of the Court."[1] It is my purpose to here discuss some of those shifts.

My subject is controversial. But it is not to be avoided for that reason. The views I am about to express are my own, and should not be attributed to the Association. Believing fervently in liberty of thought and freedom of speech, demanding these as of right, and conceding—yes, insisting—that every person in our land is equally entitled to that right, I submit my views on what I consider a timely subject. But I do so in fullest recognition that many honestly differ from my opinion and I candidly admit that I may be mistaken and they may be right.

If it be, as an able commentator lately said, that "Recent decisions create an apprehension that the Supreme Court may be surrendering its functions of checking the arbitrary power of the executive and the legislative branches of the Government," then it is of vital importance to America's people to know what that surrender means. Americans venerate their judiciary. And that is as it should be. For from the beginning of our government of laws and not of men, the Courts—State and Federal—have been the bulwark of liberty and our Judges have been, and are, able, impartial, fearless and honest men. The very rarity of judicial wrongdoing should emphasize the truth of that statement and repel the thought that a few, a very few, unworthies in a period measured by centuries justify attacks on Judges.

I deal today solely with principles. If it be true, as I believe it to be, that some recent far-reaching decisions compel the conclusion that the American people must look to the legislature rather than the judiciary for the preservation of those liberties which can be preserved only by the observance of limitations upon the exercise of power, then certainly the people should have knowledge of that fact. If, as I believe, in place of judicially enforceable constitutional limitations, we now have only self-imposed restraint upon plenary legislative power, that fact should be brought home to those who alone can protect themselves from the ruthless exercise of such power.

These are the considerations which led to the adoption of my subject and dictate my treatment of it.

During the last two terms of the Supreme Court of the United States there were several "important shifts in constitutional doctrines."

Again and again the Court turned aside from what had long been looked on as "established" principles of constitutional law which, to use the Court's own reiterated phrase, had been "settled by repeated decisions of this Court." And there was no subtlety about it. Narrow distinctions were not sought; former decisions were not merely silently ignored; cases which had "settled" "constitutional doctrines" were given direct treatment. "Established" principles which we had come to regard as part of the warp and woof of the Nation's fundamental law, were liquidated so effectively that, as the Court said, they "cannot survive."[2]

As one member of the Court put it, there took place "A reversal of a long current of decisions."[3] Two others pointed out that "a century of precedents" were overruled.[4] Upon the graves of old constitutional doctrines new ones were erected,—monument-like in present appearance but, if history repeats itself, of doubtful durability. And history may repeat itself, for Mr. Justice Frankfurter tells us that in the Supreme Court "dissents have gradually become majority opinions."[5] Granting that, and recognizing that many of the historic dissents of Holmes and Brandeis have now been

*Presidential address delivered before the Assembly at the Sixty-Second Annual Meeting of the American Bar Association, Monday, July 10, 1939.

1. *Graves v. O'Keefe*, 83 Adv. Op. 577 (March 27, 1939).

2. *O'Malley* v. *Woodrough*, 83 Adv. Op. 850 (May 22, 1939).

3. Frankfurter, J., concurring opinion, *Graves* v. *O'Keefe*, *supra*.

4. Butler, J., dissenting opinion, *Helvering* v. *Gerhardt*, 304 U.S. 405; 430; Roberts, J., dissenting opinion, *James* v. *Dravo*, 302 U.S. 134, 161.

5. *Graves* v. *O'Keefe*, *supra*.

transferred from the minority to the majority side of the Court, the day must come when the future chroniclers of our judicial history, in according unstinted praise to the rugged sturdiness of McReynolds and Butler, shown in their courageous efforts to preserve landmark after landmark of the law, will likewise record that their ringing dissents in this day became rules of decision in a later generation.

It is no exaggeration to say that, in several instances, what were frankly termed "important shifts in constitutional doctrines" were in fact the most devastating destruction of constitutional limitations upon Federal power, and the most unprecedented expansion of that power over the every-day affairs of individual citizens, witnessed in the century and a half of the existence of the United States.

I.

Alexander Hamilton, observing "that the judiciary is beyond comparison the weakest of the three departments of power," added that "The complete independence of the courts of justice is peculiarly essential in a limited Constitution," by which, he explained, he meant "one which contains certain specified exceptions to the legislative authority."

For seven more than three score and ten years, it was considered "settled" that the express constitutional prohibition against diminishing the compensation of United States judges could no more be violated indirectly than it could be violated directly. Article III, Section 1, of the Constitution declares:

"The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

From civil war days to 1939 it had been held that this provision precluded taxation of the salaries of judges. In his authoritative work on the Constitution of the United States, published in 1889, Mr. Justice Miller, speaking of the taxing power of the Federal Government, pointed out that the Constitution placed several limitations upon that power, some of them being implied. And referring to Article III, Section 1, the distinguished author said: "It is very clear that when Congress . . . levied an income tax, and placed it as well upon the salaries of . . . the Judges of the Courts as those of other people, that it was a diminution of them to just that extent."

Hamilton, in pleading for the adoption of the Constitution in the Federalist, justified the provision I have quoted, by saying:

"Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. . . . In the general course of human nature a power over a man's subsistence amounts to a power over his will; and we can never hope to see realized in practice the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter."[6]

The first attempt to tax the compensation of Federal judges was made in 1862. A statute imposing a tax of three per cent on the salaries of civil officers of the Government was construed by the revenue officers to apply to the compensation of judges. Chief Justice Taney, in a letter of protest to the Secretary of the Treasury, expressed the opinion that the tax would diminish the compensation of every judge three per cent, and that "if it can be diminished to that extent by the name of a tax, it may in the same way be reduced from time to time at the pleasure of the legislature."

Expressing the view that because all of the judges of the Courts of the United States have an interest in the question, it could not be decided in a judicial proceeding without raising questions of propriety, the Chief Justice, referring to Section 2 of Article III, said that "Language could not be more plain than that used in the Constitution," adding that moreover it is "one of its most important and essential provisions."[7]

Attorney General Ebenezer Rockwood Hoar, to whom the question was referred by the Secretary of the Treasury, agreed with the Chief Justice. In his opinion the Attorney General said that a tax upon the salary of an officer is "a diminution of the compensation" paid him.[8]

Acting upon the advice of the Attorney General, the Secretary of the Treasury, in administering the statute, thereafter exempted the salaries of Federal Judges.

In the celebrated case of *Pollock v. Farmers Loan and Trust Company* Mr. Justice Field, construing one of the sections of the Income Tax Act of 1894 as including the compensation of the judges, assigned that ground among others for joining in the decision that the Act was unconstitutional.[9] Upon the reargument of that case, Attorney General Richard Olney, disclaiming that construction, said in his brief: "There has never been a doubt since the opinion of Attorney General Hoar that the salaries of the President and judges were exempt from taxation by Congress.

The legislature acquiesced in this construction of the Constitution in exempting the salaries of judges in the enactment of the first two income tax acts following the adoption of the 16th Amendment. But when there arose great need for revenue after this country engaged in the World War, the Revenue Act of 1918 defined gross income to include "in the case of the President . . . [and] the Judges of the Supreme and inferior courts . . . the compensation received as such."[10] The reports of the Congressional Committees having the measure in charge indicate that the Congress was in doubt as to the constitutional validity of that provision and intended to have the question decided by the courts.[11] The question was raised and in two cases, decided in 1920 and 1925, the Supreme Court held that the taxation of the official salaries of Federal judges was unconstitutional.[12] These decisions were struck down less than two months ago.[13]

The student of our constitutional history will read that our highest Court held that—

"The power of Congress definitely to fix the compensation to be received at stated intervals by judges thereafter appointed is clear. It is equally clear, we think, that there is no power to tax a judge of a court of the United States on account of the salary prescribed for him by law."[14]

6. The Federalist, No. 78.

7. See 157 U.S. p. 701, for full text of Ch. J. Taney's letter.

8. 13 Op. Atty. Gen. 161, 162.

9. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U.S. 429, 604-606.

10. Sec. 213 (a), 40 Stat. 1062.

11. H. Rept. No. 767, 65th Cong., 2d sess., p. 29; Sen. Rept. No. 617, 65th Cong., 3d sess., p. 6; 56 Cong. Rec., p. 10370.

12. *Evans* v. *Gore*, 253 U.S. 245 (1920); *Miles* v. *Graham*, 268 U.S. 501 (1925).

13. *O'Malley* v. *Woodrough*, 83 Adv. Op. 850 (May 22, 1939).

14. *Miles* v. *Graham* (1925) 268 U.S. 501, 509.

But the same student will find that the same Court at another time held that Congress clearly has the power to impose income taxes on the salaries of Federal judges, and that such taxes do not diminish those salaries "within the prohibition of Article III, Section 1 of the Constitution."[15]

Puzzled, that student, still studying Supreme Court decisions, will there read the solemn declaration that "as this Court repeatedly has held, the power to tax carries with it 'the power to embarrass and destroy'."[16] But, if industrious, he will later find in another opinion the statement that "The power to tax is not the power to destroy while this Court sits."[17]

Continuing further, our student will find that the nation's highest judicial tribunal held that it is "morally certain that the discerning statesmen who framed the Constitution and were so sedulously bent on securing the independence of the judiciary intended to protect the compensation of the judges from assault and diminution in the name or form of a tax."[18]

If he still persists, this seeker after knowledge will read, in another decision of the same Court, that "to suggest" that an income tax on their judicial salaries—"makes inroads upon the independence of judges . . . is to trivialize the great historic experience on which the framers based the safeguards of Article III, Section 1."[19]

Finding the Supreme Court thus arrayed against the Supreme Court, inevitably the unfortunate student will suffer intense bewilderment.

Time and time again, the independence of the judiciary has been given practical effect in holding judicial compensation immune from taxation at the hands of the legislature. Taney espoused the principle in his celebrated letter to the Secretary of the Treasury. The executive and legislative departments for more than two-thirds of a century acquiesced in the soundness of that principle. The Court expressly declared it. It had become deeply imbedded in our constitutional law. A decision of 1939 sweeps it away as trivial.

Less than two months before the Supreme Court decided that a tax on the compensation of judges is constitutional, the Court of Appeals of Maryland expressly held that a State tax on the salaries of State judges did diminish their judicial compensation and was unconstitutional.[20] The highest Court of Maryland held that the provision of the State Constitution, similar to that of the Federal Constitution, would afford a judge no "adequate guarantee" of "preservation of his independent position" as part of the judiciary, if the legislature "may impose an income tax upon his net income from which his salary may not be excluded." Thus did Maryland's highest Court "trivialize." "If," continued the Maryland Court, "under the guise of an income tax, the salary may be taxed as income, the present rate may be increased to any percentage the legislature wills. The right of the sovereignty to tax is a power to consume and to destroy." Manifestly the great Court of the Free State did not agree with Justice Frankfurter that Marshall's famous phrase, "the power to tax involves the power to destroy," was nothing more than "a flourish of rhetoric" which had been "brushed away by one stroke of Mr. Justice Holmes's pen."[21]

Likewise the Supreme Court of North Carolina has held that the provision of the North Carolina Constitution, exactly the same as that of the Federal Constitution, 'should extend to indirect as well as direct legislation," and that if the legislature "has the power to impose a tax of 1 per cent on the official salary of a judicial officer, upon the same principle it could lay a duty which would cripple, if not completely paralyze, the whole system of the administration of justice in State tribunals." And the Court concluded that "the improbability of the non-exercise of the power does not affect the principles."[22]

No great amount of consternation can be stirred up by dwelling upon the fact that judges have been held to be subject to a general tax to which their fellow citizens not in judicial office are subject. But obviously to the question, "Why should they not be subjected to such a tax?" is the answer "Because the Constitution so provides." And the Constitution so provides for a reason far more important to the people of America than is the increase in the revenue which taxes on judges' salaries will yield. The Constitution itself put judges in a separate class, declaring that at stated times they shall receive for their services compensation which shall not be diminished. And so their salaries are distinguished from income of others. This was but one of the safeguards intended to insure that independence of the judiciary which is so vitally essential to our system of government. The forbidden diminishing is not the least less effective because accomplished by an indirect rather than a direct method. The Supreme Court of the United States has now said that the Congress can do by indirection what the Constitution says shall not be done at all.

However the political will presently reacts to this "shift," I entertain no doubt that it furnishes cause for serious concern to those of us who have been nurtured in the tradition that there is nothing so important, so essential, and so fine in our governmental system, as a completely independent judicial department.

II

Chief among the implied limitations upon the general power of taxation were those on which was long foundationed the doctrine of inter-governmental immunity. After more than a century of recognition by statesmen and jurists, this doctrine was greatly impaired during the last two terms of the national Supreme Court, and, so far as State immunity is concerned, it is apparently marked for destruction.

It is trite to say, particularly to American lawyers, that State sovereignty is a constitutional limitation on the exercise of Federal power. It is a fundamental aspect of our dual form of government. When the Constitution was being considered it was manifest that the States were unwilling to surrender their sovereignty. They felt the need of a government stronger than the Confederation in certain fields of governmental action affecting the States generally, but they refused to delegate to a strong central government unrestrained control over their local affairs. They viewed with distrust and suspicion the document which was submitted to them in 1787, and refused to ratify it until assured that it did not involve abdication of their sovereignty. The

15. *O'Malley* v. *Woodrough*, 83 Adv. Op. (May 22, 1939).
16. *Evans* v. *Gore*, 253 U.S. 245 (1920).
17. Frankfurter, J., concurring opinion in *Graves* v. *O'Keefe*, *supra*, quoting Homes, J., dissent in *Panhandle Oil Co.* v. *Knox*, 277 U.S. 218, 223.
18. *Evans* v. *Gore*, *supra*.
19. *O'Malley* v. *Woodrough*, *supra*.
20. *Gordy* v. *Dennis*, 5 A. (2d) 69 (March 29, 1939).
21. *Graves* v. *O'Keefe*, 83 Adv. Op. 577 (March 27, 1939).
22. Matter of the Taxation of the Salaries of Judges, 131 N.C. 692, 42 S.E. 970.

Tenth Amendment was adopted in fulfilment of that assurance.

A new Nation was created—a Nation which is itself sovereign but which is nevertheless composed of sovereign States. A new government was organized—a government of enumerated powers, a government prohibited from exercising powers other than those enumerated. The Constitution provided for this dual sovereignty. In recognition of it, early in our history it was held, first, that no State could constitutionally impose a tax upon a government instrumentality of the United States; second, that no State could constitutionally tax the emoluments of any office of the Government of the United States; and this was—and very recently—extended to salaries of officers and employees of any and all instrumentalities utilized to perform any governmental function; third, that the Government of the United States was—and I emphasize "was"—equally powerless to tax a sovereign State, its instrumentalities for governmental activities, or the salaries of its, or their officers or employees.

Gone is that doctrine so far, first, as it prohibited the States from taxing the official compensation of any Federal officer or employee residing within their territorial limits; or, second, as it prohibits the Federal Government from taxing the official salary of any and every State officer—from Governor and members of the legislature to State House janitor; from Chief Justice to bailiff. In this legal field we have been a nation of Rip Van Winkles, newly awakened to learn "that the United States has always had the power to tax salaries of State officers and employees and that similarly free have been the States to tax salaries of officers and employees of the United States."[23]

The doctrine that there is an implied limitation on the power of either a State or the National Government to tax the other, or its instrumentalities, stems from *McCulloch v. Maryland*.[24] And until 1938 that doctrine was construed to deprive either government of power to tax the official salaries of officers and employees of the other.

In 1842 the Supreme Court held that where taxation by a State acts upon the emoluments of an office used by the United States as a means to execute their sovereign power, such taxation is beyond the constitutional power of the State. Taxation, said the Court, is a right "essential to the existence of government; an incident of sovereignty. . . But in our system there are limitations upon that right." One of these limitations comes into operation, the Court continued, "when taxation by a State acts upon the instruments, emoluments, and persons, which the United States may use and employ as necessary and proper means to execute their sovereign powers. . .

"The compensation of an officer of the United States is fixed by a law made by Congress. . . Does not a tax then by a State upon the office, diminishing the recompense, conflict with the law of the United States, which secures it to the officer in its entireness? It certainly has such an effect," concluded the Court, "and any law of a State imposing such a tax cannot be constitutional." That was the decision in *Dobbins v. the Commissioners of Erie County*,[25] and the tax involved was on the salary of a captain of a United States Revenue Cutter.

That there was no distinction in this respect in the taxing powers of the two sovereignties was made clear by the Supreme Court in 1871, in *Collector v. Day*,[26] a case which, as the Court put it, presented "the question whether or not it is competent for Congress, under the Constitution of the United States, to impose a tax upon the salary of a judicial officer of a State," and in which it held explicitly that it was not within the constitutional power of the Congress to impose such a tax.

We find in the opinion in *Collector v. Day* this clear statement:

"The exemption of the [State] officer from taxation by the general government stands upon as solid ground, and are maintained by principles and reasons as cogent as those which led to the exemption of the Federal officer in *Dobbins* v. *the Commissioners of Erie Co.* from taxation by the State; for, in this respect, that is, in respect to the reserved powers, the State is as sovereign and independent as the general government. And if the means and instrumentalities employed by that government to carry into operation the power granted to it are, necessarily, and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

Thus we see that in these historic cases, which as time went on became recognized as constitutional landmarks, the reasoning was that if the power was not limited, as the Court held it to be by necessary implication from the very nature of our federated system, the States, on the one hand, and the Government of the United States on the other, "might impose taxation to an extent that would impair, if not wholly defeat, the operations of the" respective sovereignties when acting in their appropriate spheres. And this was held to be clear because, as stated by Chief Justice Marshall in *Weston v. the City of Charleston*,[27] "If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the" sovereignty which imposes it.

As late as 1937 the doctrines of the *Dobbins* and the *Day* cases were expressly reaffirmed by the Court in which they had been announced. No one could have predicted then that they had but two years longer to live.

In 1937 there came to the Supreme Court from New York the case of *Rogers v. Graves*.[28] Rogers was employed as general counsel of the Panama Railroad Company. He resided in the State of New York. The taxing authority of that State held he was liable to pay a State income tax on his salary as such general counsel. The Appellate Division of the New York Supreme Court and the Court of Appeals of that State upheld the imposition of the tax. The Supreme Court of the

23. Butler, J., dissenting in *Graves* v. *O'Keefe*, 83 Adv. Op. 577.
24. 4 Wheat. 316 (1819). See *Helvering* v. *Gerhardt*, 304 U.S. 405 (1938).
25. 41 U.S. (16 Peters) 435 (1842).
26. 78 U.S. (11 Wallace) 113.
27. 2 Peters, 449 (1829).
28. 299 U.S. 401 (1937).

United States, holding that the Panama Railroad Company is a government instrumentality of the United States, reversed the New York Court, and, citing the *Dobbins* and *Day* cases, said that "The rule is well established" that a State is "without authority to tax the instruments, or compensation of persons, which the United States may use and employ as necessary and proper means to execute its sovereign power." A few years earlier, the Court had had occasion to restate the reasons for that "well established" rule, and so in *Rogers v. Graves* it was content to say that "the reasons upon which it is based and the authorities sustaining it have been so recently reviewed by this Court [in] *Indian Motorcycle Co. v. United States*[29] . . . that further discussion is unnecessary." There was no dissent in *Rogers v. Graves.*

But scarcely two years went by before that "well established" rule was said never to have had any reason for existence.

One O'Keefe was counsel for the Home Owners' Loan Corporation, a Federal Government instrumentality. He too resided in New York. He too had been called upon to pay a State income tax on his official salary. He too had appealed to the New York courts. Meantime the *Rogers* case had been decided and O'Keefe's claim to immunity from the State income tax on the salary he received from the Federal Government was upheld by the New York Courts. The case then reached the Supreme Court. The time was ripe for what one of the Justices had referred to as "revision of the doctrine of implied immunities declared in earlier decisions."[30] And so in 1939, though the Court said that the Home Owners' Loan Corporation was an instrumentality of the United States, and that no distinction was to be made between officers and employees of such an instrumentality and those directly employed by the United States Government, it held that O'Keefe's official salary was subject to State income taxes.[31] It being impossible to reconcile *Rogers v. Graves* with *Graves v. O'Keefe,* the Court repudiated its decision of but two years earlier. Strangely enough, two Supreme Court Justices concurred in both of these utterly irreconcilable decisions, and it is of interest to note that the 1937 decision upholding the constitutional immunity was concurred in by Justices Brandeis and Cardozo.

Here then we have a constitutional doctrine, held and upheld for nearly a century of our national existence. Here then we have a rule which as lately as 1937 the Supreme Court deemed to be well established and based upon reasoning and authority so familiar that discussion of it was unnecessary. And in 1939 the Supreme Court said that there existed no sound reason for any such rule. In 1937 the Court said, "The rule itself is not denied." In 1939 the Court said that the rule itself does not exist. *Dobbins v. Erie County,* in the ninety-seventh year of its age, was killed in the house of its fathers. *Rogers v. Graves,* the tender infant of two years, was strangled in the very room in which it had been born. Thus came the shift from the doctrine that a State cannot constitutionally tax the emoluments of any Federal office to the doctrine that a State can most certainly tax the emoluments of all Federal offices.

What of the companion rule that the Federal Government could not constitutionally tax salaries of State officers and employees? That was established in the case of *Collector v. Day,* wherein was involved the attempted imposition of a Federal income tax on the salary of a judge of a State court. It lived to a respectable age, though it slightly missed three score years and ten. *Collector v. Day* was decided in 1871. In 1937, the Supreme Court expressly reaffirmed it, holding, in *Brush v. Commissioner,*[32] that the salary of the chief engineer of New York City's Bureau of Water Supply was immune from Federal taxation because the water system was conducted in the exercise of the City's governmental function, and the City was a subdivision of the State. That was in March of 1937. In May of 1938, the *Brush* case was overruled by *Helvering v. Gerhardt.*[33]

Gerhardt was an employee of the Port of New York Authority, an instrumentality of the States of New York and New Jersey, performing public functions for them. The United States Board of Tax Appeals, following the long established doctrine applicable to such a case, ruled that the compensation received by the Authority's employees was exempt from Federal income tax. The Circuit Court of Appeals, applying what in that Court was controlling authority, affirmed the Board of Tax Appeals, and did so on the authority, among others, of the recent cases of *Brush v. Commissioner,* and *Rogers v. Graves,* both decided in 1937. In 1938 the Supreme Court reversed the Board and the Court of Appeals, and for the first time held that the Federal Government may constitutionally tax the compensation paid by States to their officers and employees.

In the same cemetery side by side you will find the graves of eight Supreme Court cases[34] which for years upheld the doctrine of intergovernmental tax immunity as a constitutional incident to our system of dual sovereignties. I had almost said you will find their remains, but naught remains of any of them. They did not expire unnoticed. They were killed deliberately, one by one, and the name of each was called at the execution.

What caused this overruling of a century of precedents?

The Court's answer to that question is "the expanding needs of State and Nation."[35]

And now for a venture into prophecy. What further may be expected as a result of the nullifying, in substantial respects, of this doctrine? On March 27th of this year, Mr. Justice Butler was of opinion that——

> " . . . safely it may be said that presently marked for destruction is the doctrine of reciprocal immunity that by recent decisions here has been so much impaired."[36]

The import of this becomes clear when we recall that the Court has emphasized the "clear distinction between the extent of the power of a State to tax" instrumentalities of the National Government and the

29. 283 U.S. 570, 575, *et seq.*

30. Stone, J., concurring opinion in *Brush* v. *Commissioner,* 300 U.S. 352, 374 (1937).

31. *Graves* v. *O'Keefe,* 83 Adv. Op. 577 (1939).

32. 300 U.S. 352.

33. 304 U.S. 405.

34. *Dobbins* v. *Erie County,* 16 Pet. 435 (1842); *Collector* v. *Day,* 11 Wall. 113 (1871); *Gillespie* v. *Oklahoma,* 257 U.S. 501 (1927); *Panhandle Oil Co.* v. *Knox,* 277 U.S. 218 (1928); *Indian Motorcycle Co.* v. *U. S.,* 283 U.S. 570 (1931); *Burnet* v. *Coronado Oil & Gas Co.,* 285 U.S. 393 (1932); *Rogers* v. *Graves,* 299 U.S. 401 (1937); *Brush* v. *Comm.* 300 U.S. 352 (1937). In a nearby hospital lies *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819), still surviving but badly wounded.

35. *Helvering* v. *Mountain Producers Corporation,* 303 U.S. 376, decided March 7, 1938, expressly overruling *Gillespie* v. *Oklahoma,* 257 U.S. 501, and *Burnet* v. *Coronado Oil & Gas Co.,* 285 U.S. 393.

36. *Graves* v. *O'Keefe, supra,* 83 Adv. Op. 577, concluding words of dissenting opinion.

power of the latter "to tax State instrumentalities." Factors of importance, we are reminded, are present in considering the immunity of Federal instrumentalities from State taxation "which are lacking in the case of a claimed immunity of State instruments from Federal taxation." And when this emphasis is considered in the light of the reasons now given for holding that the salaries of any and all State officials are subject to the Federal income tax, the conclusion is inescapable that, unless there is another "shift," interest on State, county and municipal bonds, issued to enable States and their political subdivisions to exercise their local governmental functions, are includible within income taxable by the Federal Government unless expressly excepted therefrom by the provisions of the taxing acts.

The Supreme Court has now said that the theory that a tax on income is legally or economically a tax on its source is no longer tenable.[37] In holding that the salary paid by a State to its officers is taxable under the Federal income tax acts, the Court said that the tax laid on their salaries and paid by them could not be said to affect or burden the State; when the tax is laid, said the Court, it is not upon the State's money, but upon money which then belongs to the individual. Manifestly, all of this is as applicable to interest received by owners of bonds issued by the State as it is to salaries received by their officials. In the one case the sovereign pays for the services of men; in the other, for the services of money. The Supreme Court in the *Gerhardt* case said that salaries of State officers should not be immune from income taxes even though such taxation would increase the cost of State government. This, of course, has equal applicability to one result to be expected to follow taxing interest on State bonds. It has long been recognized that such a tax would necessarily burden the borrowing power of the States.

In adverting to the distinction between the power of the Federal Government to tax State instrumentalities and of the States to tax instrumentalities of the National Government, the Court has pointed out that the States and the people of the State are represented in the Congress of the United States so that "in laying a federal tax on State instrumentalities the people of the States, acting through their representatives" in Congress "are laying a tax on their own institutions and consequently are subject to political restraints which can be counted on to prevent abuse."

That Congress may, under the reasoning of these recent decisions, tax State, county and municipal bonds presently outstanding, as well as those hereafter issued, if the Congress sees fit to do so, seems now indubitable, barring always the possibility of still further shifts. The constitutional inhibition against the enactment of laws impairing the obligations of contracts expressly applies only to the States. This provision aside, no one familiar with the Gold Clause cases will seriously contend that, if they are neither overruled nor ignored, Federal legislation impairing or repudiating contracts will be held invalid, however shocking.

In effect the Supreme Court has said: "Let the people of the States look to those they send to represent them in the Congress." It is patent that it is for the people to say whether the impairment of the borrowing power of their States, their Counties, and their Cities, or the tremendous increase in the cost of money needed for local purposes, is of less importance to them than is (1) the satisfaction of subjecting those who own their bonds to taxes on the interest paid thereon, or (2) the assistance, if any, which the revenue derived from such taxes may give to "the expanding needs of State and Nation."

Some, including Patrick Henry, who in the State Conventions opposed the adoption of the Constitution because of the likelihood that the taxing power therein conferred would be construed to be as extensive as the Supreme Court now says it is, were met with protests, voiced in Virginia by Madison and in New York by Hamilton, that it was unthinkable that the Congress in exercising the tax power would have, as Henry phrased it, "an unlimited, unbounded command over the soul of the" States.

If any one now thinks that Henry was merely using a flourish of rhetoric, let him study *Gerhardt v. Helvering*. If Mr. Hamilton or Mr. Madison or Mr. Jay, whose pens in the Federalist papers and whose voices in conventions contributed so much to the acceptance by the States of the offered Constitution, had said to the State conventions: "If you adopt this Constitution the time will come when the general government to be organized under it will have power to take from your governor as a tax one-half of what you pay him from your State treasury for his services as your chief executive, to take a percentage of every dollar you pay from your public treasury to the members of your legislature, to subject to a Federal tax the compensation paid by you to the judges of your State Courts"—if such statements had been believed by the advocates of the Constitution and frankly made to the State conventions, no student of American history can doubt that the Constitution as we know it would never have been adopted. Yet the Supreme Court says that that Constitution gave precisely that power to the Government of the United States; that that Government's taxing power is supreme; that the only limit upon its application to the sovereign States and their instrumentalities is to be found in the will of the Congress.

III

Of far greater immediate effect than those produced by the shifts thus far discussed are the present-day results of the unprecedented expansion of Federal power under the Interstate Commerce Clause. In this field, the Court during the last term repeatedly disregarded established precedents, though in some cases its overruling of its own prior decisions followed so speedily upon their promulgation as to justify the view that they had not aged sufficiently to have acquired the dignity of precedents. Plainly the Court has overruled its recent decision in the NRA,[38] AAA,[39] and the Guffey Coal Act[40] cases. Before the AAA decision could become a precedent it had become a relic.

In the period of one year, four Circuit Courts of Appeals and six District Courts handed down decisions based squarely on the authority of the *Schechter* and *Carter* cases, only to be reversed for having done what these Supreme Court decisions bound them to do.[41]

An examination of decisions of the great Court, relating to that one clause of the Constitution which in simple language granted to the Congress the power "to regulate commerce . . . among the several States," leads to the reflection that it is indeed extraordinary that one so short provision of the Constitution could be subjected to such diverse construction.

Such an examination would disclose that in 1935

37. *Graves* v. *O'Keefe*, *supra*.

38. *Schechter* v. *United States*, 295 U.S. 495 (1935).
39. *Butler* v. *United States*, 297 U.S. 1 (1936).
40. *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936).
41. See 301 U.S. 76 for the ten C.C.A. and D.C. cases referred to.

the Court held that Congress has no power to regulate wages and hours of labor in a local business, although a large percentage of the commodity handled by the company involved came from without the State where its business was conducted;[42] whereas in 1939 the same Court held that Congress did have power to regulate labor relations where the employer was a local manufacturer who neither bought the raw materials nor sold the finished products in States other than that in which his factory was located, or at all.[43]

In 1936 the Court decided in the *Carter Coal* case[44] that the Guffey Coal Act was unconstitutional because it attempted to provide for the regulation of wages and hours of men mining coal, which, held the Court, concerned production and not commerce. In that case the coal mined was sold to those who did operate in interstate commerce. In 1939 the Court held that utility companies serving consumers in a local area within a single State were subject to the Wagner[45] Act because some of their customers were themselves engaged in interstate commerce, and therefore labor trouble in the entirely intrastate business of such utilities might affect interstate commerce carried on by others. Here again is revealed a far-reaching shift in constitutional doctrine.

The word "commerce" and the phrase "among the several States" were long recognized as limiting the powers granted by the clause containing them. That view seems to have joined the procession of precedents to the graveyard. That which had been repeatedly held not to be commerce has now been declared to be subject to direct control under an authority to regulate commerce. Activities often held not to affect interstate commerce to such an extent as to bring them under Federal control have now been held, even in cases of palpable insignificance, to so directly affect and impede interstate commerce as to be within the Federal power.

The lawyer today must needs rub his eyes when he reads that the Nation's highest judicial tribunal had solemnly declared that no distinction is clearer "than that between manufacture and commerce." "Manufacture," said that Court, "is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. . . . If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry."[46]

Kidd v. Pearson, in which that language was used, has been cited more than a hundred times by the Supreme Court and the other Federal Courts. Keeping that language in mind, let us look at the decision in the *Fainblatt* case, handed down April 17, 1939.[47] Fainblatt was engaged in Somerville, New Jersey, in operating what is known as a contract shop in which wearing apparel was manufactured. The goods to be manufactured were sent by their owner in New York to Fainblatt at Somerville, were there manufactured into clothing, and were there, in their completed state, delivered to their owner's representative, who sent them to New York. The Circuit Court of Appeals had denied the application of the National Labor Relations Act to that situation because, as it held, Fainblatt was not engaged in interstate commerce and had no title or interest in the raw materials or finished products which moved to and from his workshop. All that he or his employees did was confined to a small local factory. But the majority of the Supreme Court, holding that Fainblatt was subject to the provisions of NLRA, brushed aside the once settled distinction, and declared it to be utterly unimportant that neither employer nor employees were themselves engaged in commerce, and added that of no significance was the insignificant volume of business involved unless, indeed, it descended to the point "to which courts would apply the maxim *de minimis.*"

This case was similar to the *Consolidated Edison*[48] case in that neither the employers nor the employees were engaged in interstate commerce, but differed from that case in that in the *Fainblatt* case the employers neither bought nor sold anything. Also, the case involved only a small local manufacturing establishment, the products of which, when shipped by others to other States, constituted but a small part of interstate commerce. The Supreme Court had hitherto said that the result of such a doctrine "would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture . . . stock raising, mining,—in short, every branch of human industry," for, said the Court, there is not "one of them that does not contemplate, more or less clearly, an interstate or foreign market." Yet now the Congress is invested with precisely that almost unlimited power, and is held to have exercised it in existing statutes.

Again and again the Court had held that the fact that the activity was one which did contemplate an interstate or foreign market did not bring it within the Federal regulatory power.[49] It now announces the exact contrary. Repeatedly the Court had said that if there was vested in Congress under the Commerce Clause such a power as is now held to be vested in Congress under that clause, "it would follow as an inevitable result that the duty would devolve on Congress to regulate all those delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their management."[50] Such power in the Federal Government the Court had held was unthinkable. Such power in the Federal Government the Court now holds is undeniable.

The now expanded power is not limited to any one line of industry. For a long time it was settled that production on the farm no more constituted commerce than did manufacture in the factory. And as late as 1936 the Supreme Court held the original AAA unconstitutional, because the Federal Government was without power to control farm production. The statutory plan there sought to be enforced was found repugnant to the Tenth Amendment. The scheme to control farm production in that Act was devised and put in effect under guise of exertion of the power to

42. *Schechter* v. *United States*, 295 U.S. 495.
43. *N.L.R.B.* v. *Fainblatt*, 83 Adv. Op. 646.
44. *Carter* v. *Carter Coal Co.*, 298 U.S. 238.
45. *Consolidated Edison Co.* v. *N.L.R.B.*, 83 Adv. Op. 131.
46. *Kidd* v. *Pearson*, 128 U.S. 1 (1888).
47. *National Labor Relations Board* v. *Fainblatt*, 83 Adv. Op. 646 (April 17, 1939).
48. 83 Adv. Op. 131.
49. *Carter* v. *Carter Coal Co.*, *et al.*, *supra*, *et passim*.
50. *Kidd* v. *Pearson*, *supra*.

tax. The Court held that tax to be but the means to an unconstitutional end. Congress in the Agricultural Adjustment Act of 1938 reenacted portions of the invalidated act and adopted the simple expedient of saying that the thing to be controlled was marketing, although the undisguised intent was patently to control production, and the effect of the Act is to do exactly that. In other words, once again the pretext of the exertion of powers which are constitutionally granted was resorted to as the means to an unconstitutional end.

In *Mulford v. Smith*,[51] decided April 17, 1939, the Supreme Court sustained marketing quotas for tobacco under the AAA of 1938, which in view of the 1936 decision invalidating the original AAA must be considered as another important shift in constitutional doctrine. This last decision established a new principle of constitutional law in that it sanctioned Federal control of production by means of marketing regulations—which regulations, the Court held, may extend to prohibition. The portion of the statute involved in the *Mulford* case provided marketing quotas for flue-cured tobacco. The majority of the Court, stressing this fact, said that the statute does not "purport" to control production. The persons affected, who brought the suit, were producers of flue-cured tobacco; in providing marketing quotas, under the Act, "The quota is to be apportioned to the farms on which tobacco is grown." By the Act "it is directed that the quota is to be first apportioned among the states based on the total quantity of tobacco produced in each state" during a prescribed period; the figures to be used are exclusively those of "production" related to acreage. "The Act provides for the apportionment of the state allotment amongst the farms which produced tobacco." Certain adjustments in quotas are provided for, but "A limit is fixed below which the adjustment may not reduce the production of a given farm. Allotment to new tobacco farms is to be made on a slightly different basis." The Act "provides that if tobacco in excess of the quota for the farm on which the tobacco is produced is marketed through a warehouseman," then heavy penalties shall be incurred which ultimately must be paid by the "producer."

I have here quoted from the Act of Congress and the Court's opinion in the *Mulford* case, and wherever I have used the word "production" or "producer" or "farm" that word is a quotation and not any attempt of mine to supply terms. And the Supreme Court in terms held, in upholding such an Act as a valid Federal regulation of interstate commerce, that it did "not purport to control production." It was by this legislative juggling of words, the substitution of "marketing" for "producing," without the slightest change in substance, that brought about a decision of the high Court which places production on the farms of America under the control, not only of the Federal Government, but of an officer of the executive department of that Government, with ruinous penalties laid upon the farmer who dares ignore Washington's edicts.

Certainly no one who considers the doctrine of the *Fainblatt* and like cases in the industrial field, and the *Mulford* and like cases in the agricultural field, can question the assertion that new significance has been given to the Commerce Clause of the Constitution as a source of the police power of the Federal Government. In those decisions we find that for the first time in our history the power to regulate interstate commerce has now been extended to regulation of production; that for the principle that the effect of local activities on interstate commerce, to justify Federal regulation, must be direct and substantial, has been substituted the rule that any one engaged in an intrastate activity, even if it be not commerce, is subject to Federal regulation if those activities might have any possible effect on interstate commerce, however indirect, however remote, however unsubstantial—provided only the rule *de minimis* is not applicable.

I am not here greatly concerned with the impairment of the doctrine of State rights, the intrusion into their sovereignty, or the exclusion from their spheres of the control of the multiform activities, "which in their nature are and must be local in all the details of their successful management." To one side may be laid the question as to whether or not business (and within that term I include manufacturing, agriculture, mining, and all productive industry) would, if left to the hitherto recognized broad regulatory powers of the State Governments, be hampered by the numerous newly devised shackles upon liberty. What I stress here is the tremendous enlargement of Federal power by the mere shifting by the judiciary away from long established constitutional doctrines to newly announced constitutional concepts. I emphasize this, irrespective of the corresponding curtailment of the independence reserved to the States and the serious impairment of their respective control over local affairs. The outstanding point is that by recent judicial construction the power to regulate interstate commerce has brought within the ambit of Federal control most if not all activities of the Nation. Under that once limited grant of power, as now newly interpreted, Congress may, to such extent as it deems proper, regulate wages, hours, output, prices; the quantity of innumerable products; the wages that may be received for, and the hours that may be worked in, producing them; the prices which may be charged by their owners for them; provided and only provided that any part of them is intended to pass beyond State lines, or that any part of them, or the materials used in producing them, once crossed State lines. Producers of potatoes in Maine, peanuts in Virginia, cotton in South Carolina, cane sugar in Louisiana, wheat in Kansas, corn in Iowa, tobacco in North Carolina, and Connecticut, peaches in Georgia, oranges in California, and thousands of small local enterprises everywhere, become subject to national direction, regulation, control, prohibition. The principle can be applied to petroleum produced in California, Louisiana, Oklahoma and Texas; to metals mined in Colorado and Montana. The price of privately owned milk produced in one county, from a cow born and raised therein, that had never strayed from her native heath, drunk by a local resident, can be fixed by the Secretary of Agriculture of the United States merely because other milk produced and sold in the county is sent to other states.

It is to this expansion of the power of a general government over practically every branch of human industry that I direct attention, in the hope that my feeble voice may contribute to its recognition by the people whose liberties are involved in the exercise of such power.

IV

Those who think lightly of shifts in constitutional doctrines must think lightly also of the importance of knowing what the law is. Is it to be a movable thing, changing and changeable after each reconstruction in the membership of courts? Is it to vary with the shifting currents of the political will? Or is to be something

51. 83 Adv. Op. 628.

certain, steadfast and enduring, upon which reliance can safely be placed?

In the last two terms of the Supreme Court there were 135 cases affirmed, 180 reversed and 199 dissents announced. These figures indicate the extent to which the reconstructed Court has undertaken to disavow and discard old doctrines and to declare new principles and new concepts.

The New York Courts were reversed in the *Rogers* case, and then were reversed in *O'Keefe's* case for having followed the Supreme Court's decision in the *Rogers* case, as they were bound to do. Circuit Courts of Appeals and District Judges were reversed because they had not contemplated unannounced but impending shifts in constitutional doctrines; they had thought that principles which the Supreme Court had said had been settled by its repeated decisions were really settled; they had followed decisions which at any time in the preceding century and a half they would have been required to treat as binding upon them.

The plain result of all this is that no lawyer can safely advise his client what the law is; no business man, no farmer, can know whether or not he is breaking the law, for if he follows established principles he is likely to be doing exactly that. What was a constitutional principle yesterday may be a discarded doctrine tomorrow, and this, all this, in what has so often been proudly proclaimed to be a government of laws and not of men. "Shifts in constitutional doctrines" is but a phrase which describes the abolition of *stare decisis;* the replacing of stability by instability, the substitution of uncertainty for certainty, and of plenary power for limitations upon power; the transfer from States and local communities to a centralized government at Washington of "most if not all activities of the Nation."[52] If these be consummations devoutly to be wished, then we have the fulfilment of the wish.

V

It may be said that these things are consistent with the will of the people, the will of the people as it would be registered now if put to a vote. I do not doubt that majority approval would be given to any rule subjecting State and Federal Government employees to the same obligation of a non-discriminatory general income tax to which every other receiver of income is subjected. But is not that but a way of saying that the Constitution should be construed to mean whatever a majority would want it to mean at different times with every change of political views? If the Constitution is to be construed to mean what the majority at any given period in history wish the Constitution to mean, why a written Constitution and deliberate processes of amendment? Why the declaration of fundamental limitations upon the power of government and the assertion of the reservation of unalienated liberties? To guarantee against usurpations of governmental power

52. McReynolds, J., dissent, *N. L. R. B.* v. *Fainblatt*, 83 Adv. Op. 646.

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President American Bar Association, 1938-1939

and protect against the arbitrary will of temporary majorities is the reason for setting up a written Constitution, equally vital in the limitations it imposes as in the power it grants.

The new concept seems to be that it would be useless labor to seek to amend the Constitution in the method provided in the Constitution. Why amend when by adopting new interpretations the same end can be accomplished? Such in this day seems to be the theory and the practice.

VI

For more than five generations the people of America have looked with unshaken and unshakable confidence upon American Courts as temples of justice. Happily it may be said that nothing has occurred to diminish that confidence in litigation between citizen and citizen, or in those cases which involve individual liberty intended to be protected by the specific and sacred guarantees of the Bill of Rights. The administration of justice according to law in controversies between man and man goes forward as steadily today as at any time in the history of courts. Our Federal and State judiciary still vigilantly uphold freedom of speech, press, and worship; the right of peaceable assembly; the right to have one's home treated as his castle; the right to be free from unreasonable searches and seizures; the right to trial by jury when life, liberty or property is involved, to be represented by counsel, to have personal liberty guarded in those vital respects that are so dear to a society of free-born men. This indeed is reassuring.

But may there not arise fear that with a steadily growing disposition to adapt the law to changing social and economic conditions, these barriers erected by wisdom gathered from experience may next be weakened or destroyed? Can a government which may arbitrarily control the individual's economic freedom be relied on permanently to keep safe his civil and political liberties?

VII

The conclusion to be drawn from all of this may, I think, be stated simply: It is that reliance against the exercise of arbitrary power must be placed by the people henceforth in the legislative rather than in the judicial department of the National Government.

The framers of the Constitution and the people who adopted it contemplated that the legislative branch of the Government of the United States should be powerful, and anticipated that it would be wise. Even so, they carefully guarded and plainly limited its powers. The guards have been let down, many of the limits have been obliterated. The people of the United States should know this, and, so knowing, give increasing attention to the ability and stability, the courage and the independence of the men and women sent to the halls of our national legislature. There rest now America's hopes. Freed is the Congress, by the action of the Supreme Court, from all but a very few constitutional fetters on its exercise of power. Legislative independence and legislative wisdom are America's almost sole reliance for the continuance of that security of the blessings of liberty for which the Constitution was framed and the Government of the United States of America created.

ANNOUNCEMENT OF 1940 ESSAY CONTEST CONDUCTED BY AMERICAN BAR ASSOCIATION PURSUANT TO TERMS OF BEQUEST OF JUDGE ERSKINE M. ROSS, DECEASED

INFORMATION FOR CONTESTANTS

Subject to be discussed:

"To What Extent May Courts Under the Rule Making Power Prescribe Rules of Evidence?"

Time when essay must be submitted:

On or before February 15, 1940.

Amount of Prize:

Three Thousand Dollars.

Eligibility:

Contest will be open to all members of the Association in good standing, except previous winners, members of the Board of Governors, officers, and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to six thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and the absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with Executive Secretary, American Bar Association, 1140 North Dearborn Street, Chicago, Illinois, who will furnish further information and instructions.

ARTICLES IN THE JOURNAL

As it is the policy of the JOURNAL to provide, within practicable limits of space, a forum for the free expression of the views of members of the Association on matters of importance to the profession and the public, and as a wide range of opinion elicits a representative expression of the varying views, the Association and the Board of Editors of its JOURNAL assume no responsibility for the views stated in signed articles, beyond expressing by the fact of publication a judgment that the contents of the article merit consideration by our readers.

Editorially the JOURNAL supports the policies and objectives of the Association as from time to time duly determined. The views expressed are not necessarily those of each member of the Board of Editors.

ANNUAL MEETING IS CULMINATION OF NOTABLE YEAR OF ACTIVITY AND GROWTH

President Hogan's Address Poses Fundamental Questions as to American System of Government—Senator Byrnes Speaks on "The Constitution and the Will of the People"—Meeting Affords Remarkable Forum for Expression of Views on Matters of Grave Public Concern by Outstanding Figures in Public and Professional Life—Program of Committee on Bill of Rights Upheld—Structure and Committees of Association Debated and Certain Decisions Reached—Action on Reports of Sections and Committees—Association Medal for 1939 Awarded to Edgar Bronson Tolman—President Beardsley Outlines Plans to "Streamline" Organization—San Francisco the Perfect Host.

THE SIXTY-SECOND ANNUAL MEETING, which opened in San Francisco on July tenth and continued during that week, transacted a great deal of Association business and took some notable actions. It will be remembered as one of the most enjoyable and interesting meetings in the recent history of the association. As is usual at meetings on the West Coast, the registration was not as large as at other gatherings during the past few years; but the sessions were nevertheless well attended—the Assembly sessions more largely attended than usual—and the whole meeting was replete with interest and worth-while discussion. The success of the meeting was the culmination of a notable year of Association activity and growth, under the dynamic leadership of President Frank J. Hogan.

This issue of the JOURNAL is appropriately devoted for the most part to summaries and narratives which will bring the story of the meeting to Association members who could not attend. The work of the Bill of Rights Committee was sustained against attacks, and was overwhelmingly approved for continuance on a broadened basis, under the militant leadership of Chairman Grenville Clark, of New York. A new and comprehensive program for the improvement of the procedure in criminal cases in the Federal Courts was presented as within the limits of early and practicable attainment, by Chairman Walter P. Armstrong, of Tennessee, and was approved by the House, with a minority in the negative on a few of the proposals. A new Section for discussion of the law of taxation was created, in view of the importance of that field of law. The effort to have the Association sponsor a campaign for an increase in the salaries of all Federal judges, was defeated as untimely in view of the urgent need for economy in expenditures and reduction in tax burdens. A notable forum was conducted, in the Assembly, as to the preparation and presentation of contested matters under the Fair Labor Standards Act of 1938 and the National Labor Relations Act.

Throughout the week, in many of the sessions of the Assembly, the House, and the Sections, there ran a debate on the highest plane, as to the fundamentals of the American system of government and American ideals of justice under law. According to the tradition and practice in Association affairs, a wide variety of opinions were expressed by persons experienced in National leadership; and the great debate was all in a mood of good humor and prevalent respect for reasoned views.

Structure and Committees of the Association Debated

A great deal of time was devoted by the Assembly and the House of Delegates to discussion and action on a large number of matters which concerned the organization and functioning of the Association itself. These questions were threshed out and decided, by the members present (the Assembly) and by the representative body (the House) in open-minded fashion. In no instance did a difference of opinion develop and persist, under the bi-cameral system, between the House of Delegates and the general attendance at the meeting, constituting the Assembly. Such divergencies in action as arose were largely in phraseology, and these were promptly ironed out through House acceptance of the Assembly action, or Assembly acceptance of the House version, as seemed best upon full consideration.

Several amendments to the Constitution and By-laws, along lines developed by experience, were adopted by the Assembly and the House. None of them was far-reaching in scope or effect. Several proposals which would have changed fundamentally the present structure of the Association were decisively rejected by both the Assembly and the House, after patiently hearing the proponents.

The comprehensive report of the Committee on Survey of Sections and Committees, presented by former President Frederick H. Stinchfield, was discussed at length in both the Assembly and the House. A number of Committees no longer needed were discontinued. On the other hand, both the Assembly and the House showed strong preference for continuing small, expert Committees of the Association, in specialized fields of law or Association work, rather than proposals for merging the work of such Committees into Sections.

As a result, such Committees as Aeronautical Law, American Citizenship, Commerce, Economic Condition of the Bar, Cooperation Between the Press, Radio and Bar, and Securities Laws and Regulations, withstood the recommendations of the Survey Committee to bring about their abolition—recommendations supported in most instances by the Board of Governors. The policy-determining bodies of the Association thought other-

wise, after full discussion; and so these Committees will go on.

The attention given at this meeting to the business and work of the Association was emphasized by the "official family talk" given by incoming President Beardsley at the final session of the House of Delegates. Various resolutions which he recommended as in the interests of a more compact and effective organization of the Committees and Sections, were offered by last retiring President Arthur T. Vanderbilt, and accepted with minor amendments.

Bar "Rosters" and the Canons of Ethics

The lively sessions of the Assembly and House gave rise to several issues of present and future importance. An impending issue which may produce proposals to amend the Canons of Ethics was forecast in the motions made as to the report of the Standing Committee on Professional Ethics and Grievances. Although the matter was deferred to permit adequate consideration of it at the meeting of the House of Delegates next January, the lines were sharply drawn in the debate in San Francisco.

Under Article X, Section 15(c) of the By-laws, the Committee on Professional Ethics and Grievances is authorized, "when consulted by any member of the Bar or by any officer or Committee of a State or local Bar Association, to express its opinion concerning proper professional or judicial conduct," etc. Such requests for expressions of the Committee's "opinion" arise from time to time as to interpretations of the Canons of Ethics, enacted by the House of Delegates in pursuance of its legislative and policy-determining powers in behalf of the Association and the profession. Among the Canons of Ethics are those relating to law lists and the question of conduct presented by the inclusion of the names of lawyers in lists which do not conform to the prescribed standards and have not been approved by the Association.

In addition to the supervision or "policing" of the commercial law lists by the Association, various State and local Bar Associations have initiated the publication of "Bar rosters" in their respective States. Some of these "rosters" undertake to give considerable specific information about the individual lawyers, to aid and guide the forwarding of law business, and so to encourage membership in the State or local Bar Association publishing the roster. Some of these rosters, it is said, do not conform to the standards prescribed in the Canons of Ethics for law lists. In its 1939 report, the Committee on Professional Ethics and Grievances stated that "The Law Lists Committee has decided that such rosters are not law lists, and this Committee has decided that because they are not law lists, a lawyer may not properly permit publication of this information with his name, under Canon 27."

The Committee on Professional Ethics reported its opinion, but did not ask the House to pass judgment on it. Motions were offered to make this subject a special order of business for the mid-winter meeting and to suspend the operation of the opinion meanwhile. These motions prevailed, but not until an issue as to the powers of the House in such a matter had been clearly defined. Proponents of the motions contended that, under Article V of the Constitution, the House of Delegates is the plenary policy-determining body of the Association, subject only to referendum, and that any action by any Section or Committee may be directly disapproved, modified, or annulled, by the House.

Members of the Committee and others argued that the formulation, adoption and amendment of the Canons of Ethics are the legislative function of the House, but that the rendering of opinions as to proper professional conduct under the Canons is a judicial function of the Committee. Once the Committee gives its opinion, it was argued that the House cannot change or suspend it, as such, but can only amend the Canons of Ethics on which the opinion was based. Judge Orie L. Phillips stated that Article X, Section 15, of the By-laws, had been drawn for the purpose of preserving this differentiation between the legislative functions of the House and the judicial functions of the Committee. The vote of the House to defer and suspend in this instance was in no way a determination of the ultimate issue, which goes deeper than the immediately important issue of "Bar rosters."

Issues As to Methods of Nominating and Electing Officers

The 1939 meeting witnessed the renewal of previous proposals to amend the Constitution adopted at Boston in 1936, as to the methods of nominating and electing the officers of the Association and members of the Board of Governors.

At the present time, a nomination for each office to be filled is made by the State Delegates, at a meeting so held as to permit publication of the nominations at least seventy days before the meeting. There is one State Delegate from each State, nominated by petition and elected by mail ballot of all of the members of the American Bar Association in his State. Nominations made by this representative body are deemed likely to be carefully chosen, and to give due weight to the wishes of all of the States, including the smaller States. In any event, the nominations are made and published well in advance, and do not take up the time of the Annual Meeting. If as many as one hundred members of the Association (fifty for the Board of Governors) do not like the nomination made for any office, or wish to make another, they may do so by petition, likewise made and published in advance, so that all members of the Association have an opportunity to express their views and wishes thereon. Only nominations thus made and published in advance can be considered at the election, which takes place in the House of Delegates.

One of the amendments renewed by Judge Lawther of Texas would in effect do away with the requirement for advance nominations, by permitting any member of the House of Delegates to make a nomination from the floor at the time of election, without having given any advance notice or public information to Association members about such nomination. This proposal was again rejected by a decisive vote, in each the Assembly and the House.

Another proposal for a change in the Constitution of the Association was renewed in San Francisco, this one by former President Clarence E. Martin, of West Virginia, as to eligibility for the Board of Governors. The latter body is the administrative agency of the House, and the present Constitution subordinates it to the House, lest the smaller body become a policy-determining agency of the Association. Familiarity with the work and views of the House was deemed necessary for useful work in the Board. To that end, it was provided that the members of the Board should be chosen from among the members of the House, rather than from among others who might tend or wish to become independent of the House. As some members of the Association have now had experience in

the work of the House but have ceased to be members of it, the constitutional eligibility for election to the Board was broadened this year to include both the members of the House and the former members of the House.

The amendment renewed by Mr. Martin this year would have opened the doors to choosing any member of the Association as a member of the Board of Governors, without requiring that experience in the work of the House be first had. The belief prevailed that experience in the House should be pre-requisite to membership in the Board of Governors and that the Board should be kept a subordinate administrative agency of the House; and the "Martin amendment" was again rejected, this time by the general membership in the Assembly. It did not come to a vote in the House.

Retiring Members of the House

Genuine regret was felt by many that the adjournment of the 1939 meeting of the House marked the retirement, from membership therein, of several beloved and experienced men, who have been members of the House since its founding. Louis E. Wyman, of New Hampshire, Henry S. Ballard, of Ohio, and Robert Stone, of Kansas, were among those who ceased, at least for the time being, to be members of the House. The veteran State Delegates who will be succeeded include Harry P. Lawther, of Texas, James C. Collins, of Rhode Island, James R. Morford, of Delaware, Joe S. Lewis, of Oklahoma, Lewis Benson, of South Dakota, and O. B. Thorgrimson, of Washington State, all of whom have been valued members of the House. On the other hand, able and experienced lawyers have been chosen to take their places and help carry on the work.

With the membership of the Association again at "a new all-time high" and with the momentum engendered by the 1939 Annual Meeting, President Beardsley took over the duties of his office at an auspicious time. His ability and experience guarantee that the work of the Association will be effectively done.

San Franciscans Were Splendid Hosts

The friendly spirit of an Association meeting is accentuated, for many of the members and their families, by the long trip across the Continent, on special trains and otherwise, which give most agreeable opportunities for the formation of valued and lasting friendships, as well as for sight-seeing. This year's special trains, under the experienced general supervision of William P. MacCracken, for the Association, travelled a well-planned itinerary and had a most enjoyable time.

The host for the 1939 meeting was the Bar Association of San Francisco, with Hartley F. Peart as President. Under his energetic directions, practically every member of the host Association was "on the job" to help entertain the visiting lawyers and their families. The entertainment features were numerous, varied, and most enjoyable.

San Francisco is an admirable meeting place for American lawyers. Its many hotels are of excellent quality; its Opera House and many smaller auditoriums in the Veterans' Building provided ample and comfortable places of meeting; and there is always an "atmosphere" about the Golden Gate City, with its vast harbor, graceful bridges, fine restaurants, and colorful reminders that there is the gateway to the Orient as well as to the charms of California.

The attractions were added to and heightened this year, by the presence of the brilliant Exposition on nearby Treasure Island, where many of the social festivities were held, and by the fact that the American fleet was at anchor in San Francisco harbor and the Admiral in command extended to the visiting lawyers and their families most hospitable opportunities to visit the ships which are the pride of the Navy.

The special features of the entertainment program were remarkable in their variety and interest. There was a sightseeing trip giving the visitors commanding views of the beauties of the bay and city; a tour of Chinatown, with its exotic life, always of interest to visitors; a day of sightseeing and entertainment on Treasure Island, followed by a tea at the Yerba Buena Club on the Exposition grounds, as guests of the Bar Association of San Francisco; a visit to the ships of the Pacific Fleet at anchor in the harbor on what had been specially designated as "American Bar Association Navy Day"; and a cruise of the San Francisco Bay in private yachts and motor boats. And there was a wonderful exhibition of rare legal manuscripts and books, embracing several incunabula, which made the bibliophiles rejoice. The visiting members and their ladies availed themselves to the full of these wonderful attractions and were enthusiastic in their reports of the pleasure they had had and of the hospitality of their hosts.

There were also many entertainments of a social character, such as the President's Reception which, departing from the usual custom, was given by the Bar Association of San Francisco, with President Frank J. Hogan, of the American Bar Association, as the guest of honor; the Junior Bar Stag Reception; the Young People's Dansant; the Women Lawyers' Dinner; the Junior Dansant Reception; the Treasure Island Dansant, and the Farewell Dansant. Mention should especially be made of the delightful Garden Tour, during which the ladies were given a view of some of the famous gardens upon the Peninsula of San Francisco, and of the charming attention from the Ladies' Flower Committee which took the form of a fresh and fragrant gardenia every day for each of the visiting ladies.

In view of the fact that practically the whole Bar Association of San Francisco seems to have taken part in the preparations for one of the most successful entertainment programs in the history of the Association, it is of course impossible to make personal acknowledgment to all of our genial and generous hosts. However, special mention should be made of the Executive Committee, of which Mr. Hartley F. Peart was Chairman; Louis S. Beedy, Vice-Chairman; James L. Feely, Secretary; and John H. Riordan, Arthur W. Brouillet, Florence M. McAuliffe, Delger Trowbridge and Harry S. Young were members.

The women's Committees were likewise extremely active and maintained San Francisco's reputation for efficiency to the fullest extent, under the leadership of an Executive Committee composed of Mrs. Alexander Morrison, Chairman; Mrs. Eugene M. Prince, Mrs. E. S. Heller and Mrs. Warren Olney, Jr., Vice-Chairmen; Mrs. Edward I. Barry, Secretary; and Mrs. Arthur W. Brouillet, Mrs. Allen L. Chickering, Jr., Mrs. Herbert W. Erskine and Mrs. John H. Riordan, members.

Many of the visitors took advantage of the opportunity, after adjournment, to visit Los Angeles and other parts of California and the Pacific Northwest. The cordial hospitality and capable arrangements of the San Francisco Bar Association will be long remembered in the annals of the Association.

MEETINGS OF THE ASSEMBLY

First Session of Assembly Opens with Impressive Ceremonies—Welcome to San Francisco—President Hogan's Challenging Address—Proposed Amendments to Constitution Stir Lively Debate—Action Taken

AN impressive innovation opened the first session of the Assembly. The Lord's Prayer and the Star Spangled Banner were splendidly sung, and a troop of Boy Scouts brought in the American flag. Mayor Rossi and President Peart of the San Francisco Bar Association welcomed the visiting lawyers; President Hogan made appropriate response. The Annual Address discussed "Important Shifts in Constitutional Doctrines", and was in itself an event of public importance. Lively debate ensued upon several of the proposed Amendments of the Constitution and By-laws of the Association. Judge Lawther of Texas and Clarence Martin of West Virginia were listened to in friendly fashion, but their proposals were rejected. The philosophy and structure of the Association were the subjects of animated discussion, at this and subsequent sessions of the Assembly, with the Assembly attendance and interest usually larger than it had been at the most recent meetings. Before recessing the first session, the Assembly balloted to fill two vacancies in its representation in the House of Delegates.

THE Sixty-second Annual Meeting of the Association opened with impressive patriotic and religious ceremonies. Immediately after he had called the Assembly session in the Opera House to order, President Hogan asked the gathering to remain seated while Mr. Charles Bulotti of the celebrated Bohemian Club sang a beautiful rendition of the Lord's Prayer.

As the last notes of "For Thine is the Kingdom, the power and the glory," in Mr. Bulotti's magnificent voice, died away, there was a roll of drums; and a troop of Boy Scouts carrying the American Flag came down the center aisle to the platform. The gathering rose, and remained standing while Mr. Bulotti sang "The Star Spangled Banner" with fine effect.

This was followed by the addresses of welcome, the President's address, and the rest of the formal program. An interesting feature of the session was the presence on the platform of the Presidents of thirty-seven State Bar Associations, significant of the federation of the profession which has been achieved under the Association's leadership.

President Hogan introduced Mayor Angelo Rossi, of San Francisco. "When we asked the Mayor to be with us this morning," he said, "with a modesty which I should not have expected to find in one holding political office, he remonstrated that he was not a lawyer. But the record shows that a great university has conferred upon him the degree of Doctor of Laws, and the dictionary tells us that this means a teacher of the law."

"I am very happy," said Mayor Rossi, "to be here this morning as the chief executive of this city of St. Francis, and to extend to each and every one of you the most sincere welcome in the name of the people of San Francisco.

"May I also say in passing that we are deeply grateful to those who have selected our beloved city for this convention. As you may all well know, this year is rather an unusual year here in San Francisco and in the Bay area. There are many conventions being held here, due to the fact, I think, that we are holding a World's Exposition.

"Regardless of how many organizations meet with us, there is none that is more important than the one which you represent. Your President a few moments ago said that I am not a lawyer, but he does not know but that I might be on my way; and I say that for the reason that we have something in common. First of all, I did receive the honorary degree of Doctor of Laws from the University of San Francisco, of which I am indeed very proud. That is only the first step. You do not know but that I might go to the State Bar of California, and from there on to the Supreme Court and finish the job, but I hardly think that I will be so successful. . . .

"The second reason I think we have something in common is that this is your Sixty-Second Annual Meeting. You were organized in 1878. That is the year in which I was born, so we started out together. . . . (Laughter and applause.)

"I know that during your deliberations here you are going to discuss many things which will deal with your present and future organization. You will also discuss many problems which not alone will be of interest but will be of benefit to the people throughout the United States, and I just want to say in passing that I hope and wish, and I am sure that your meeting will be a great success.

"During your busy hour, I hope that you will find enough time to visit some of the points of interest in San Francisco, because we have many, and likewise in the Bay area; but over and above all, do not forget to visit the Golden Gate International Exposition. That exposition is built on a man-made island. Less than three years ago that was only part of our Bay, but today it is a beautiful setting—flowers, greens, beautiful buildings, wonderful exhibits, and a place to enjoy yourself. We are delighted and happy, indeed, that you have come out West to see what we have here, and I am

sure that you will enjoy every minute of it while you are here.

"The Committee in charge of your entertainment and of this convention have a responsibility in seeing that the program is carried out. If they fail, it will be the first one that has failed here in San Francisco.

"In conclusion may I say again that we are very happy, proud and feel honored with your visit to San Francisco. We hope that every minute of your time here will be enjoyable, and that when you take your departure for home, you will carry back to your home town pleasant memories of your visit to the city by the Golden Gate, and that you will go back with a firm determination to come back here again, where you will always be received with open arms.

"Again, thrice welcome." (Applause.)

Welcome Extended by the San Francisco Bar

In presenting next the indefatigable President of the host, San Francisco Bar Association, President Hogan declared that—

"Those of us who have already spent part of a week in this beautiful city at the Golden Gate have come to realize that whatever the Constitution and By-Laws of the San Francisco Bar Association may set down in black and white, so far as we are concerned, the function of that Association seems, first, to make us very happy and, second, to destroy our digestive apparatus. The chief conspirator in the latter effort, the President of the Bar Association of San Francisco, Mr. Hartley F. Peart." (Applause.)

President Peart's gracious greeting was as follows:

"We of the local Bar welcome you to San Francisco. We are very proud and very happy to have you here again after a lapse of seventeen years. Confidentially, we have been preparing for this day for many weeks. We have taken up the rugs, swept them, beaten them, dusted, swept, and put them down again. We have taken down the curtains, had them starched, laundered, ironed, and put up again. We have laid in a big stock of provisions. Everything is spick and span, and the help is in a good humor, although they know the company is going to be here for a week.

"For the last few days, we have been out on the front steps, looking to the North and to the East and to the South and today you are here in the Far West to our great pleasure. You are at land's end, where the West begins and ends, and where, as one of our members far from home once nostalgically said, the sun reluctantly sets on California. You will recognize this as one of those modest understatements so characteristic of all Californians. (Laughter.)

"We San Francisco lawyers do not want to interfere with your work, but we do not want you to work too hard. We have so many things to show you: Our beautiful Fair on Treasure Island that the Mayor has mentioned, our mammoth bridges which really leave nothing to cross now, our city, our flowers, our Bay with the great battleship fleet, our neighboring communities. And you might look over our Association itself.

"For the most part, descendants of the pioneers of every race who came here in the gold days, we, like our fellow citizens, are truly cosmopolitan, living and working together in the utmost harmony. We are a unit in our determination to do our utmost to make your stay a happy one. We want you to know and we hope you will like our city. Be sure that the ladies attend the Treasure Island Tea in the garden tour. The visit to the battleship fleet on Friday morning, by special invitation from Admiral Bloch, the Commander-in-Chief, to whom we are greatly indebted, should be memorable. We hope you will enjoy the dancing and entertainment on Treasure Island. Saturday is American Bar Association day at the Fair, and by all means go on the Bay cruise on the yachts and power boats Saturday morning. If you have a few spare hours, do not neglect your golf. All arrangements are made.

"The President's reception on Wednesday evening in our hands will positively be different from all other Presidents' receptions. One reason is that we have Frank J. Hogan on the receiving end. Really, you cannot afford to miss a single item on our entertainment program.

"And when you must leave us, may the words of our Spanish predecessors to departing guests, often spoken in California in the long ago, still hold their full meaning: 'You go happy to your homes, leaving us unhappy in your absence.'" (Applause.)

President Hogan's Response

Instead of the customary formal address of response by a designated representative of the Association, President Hogan appropriately gave the official response:

"Mr. Mayor, Mr. President, with all our hearts we thank you. We have anticipated already the pleasure that this visit to your great city will give us. If I, myself, were asked to select from American history the greatest achievement since the adoption of our Constitution, I would not point with pride to the carnage of any battlefield, but I would point with the pride that every American should feel to the glory that is San Francisco in her achievement when she rose from the ashes of 1906. (Applause.)

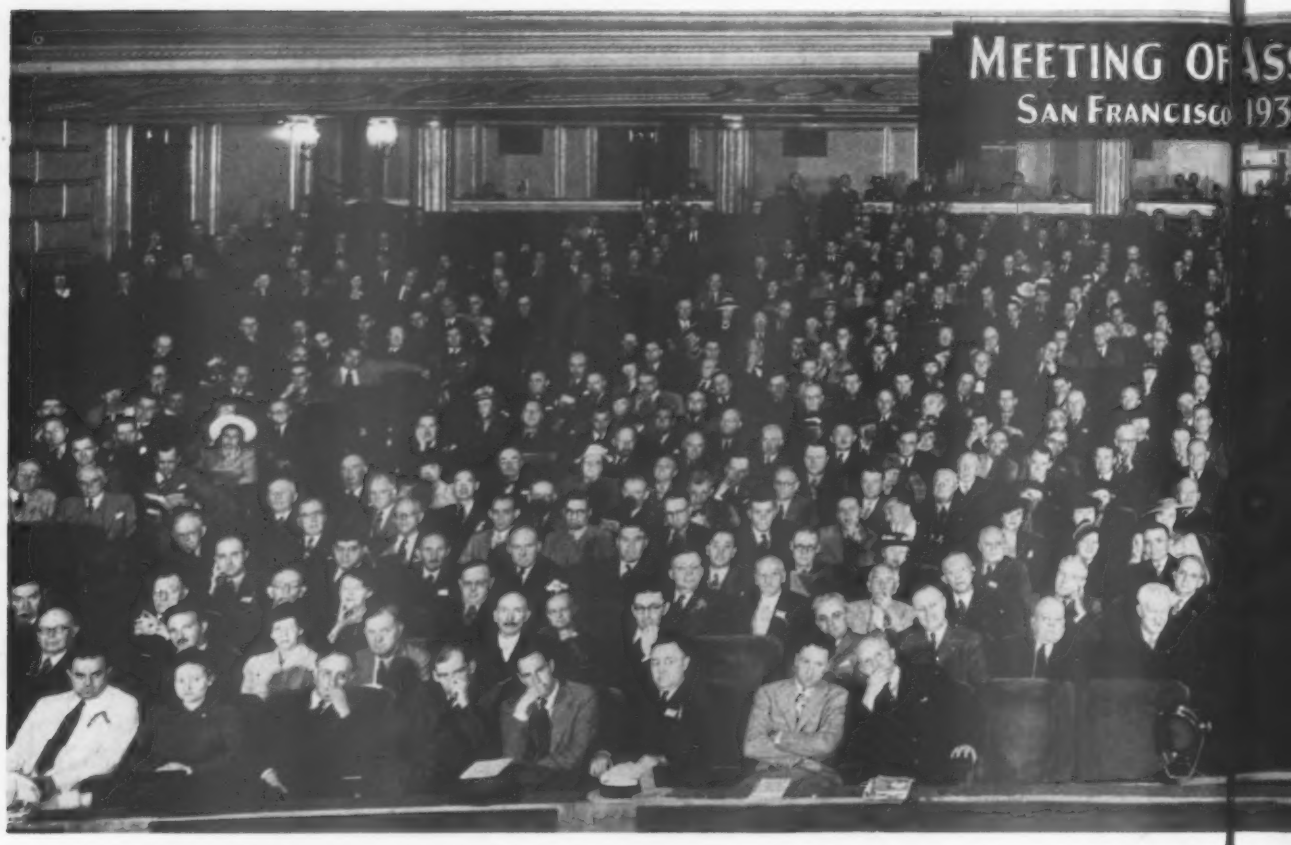
"I present to you the honored guests of the American Bar Association, the representative of our sister association, the Canadian Bar Association, Mr. R. L. Maitland, King's Counsel. (Applause.)

"Just as the President of the San Francisco Bar Association concluded, I received a note from the President of the California State Bar who resides in Los Angeles, asking that the record might contain one correction. The sun, he says, may reluctantly set on San Francisco, but it never sets on Los Angeles. (Laughter.)

"It is a privilege for me to be able to inform you that on the stage today are thirty-seven Presidents of State Bar Associations, symbolizing the tying in, the coordination, the bringing together of efforts, of our National Association and our State Bar Associations."

The Annual Address Evokes Applause

President Hogan then delivered the Annual Address. Its courageous and challenging tone at-



tracted attention from the start. He stated at the onset that it represented no opinion but his own and should not be attributed to the Association, but there was no lack of frequent and sympathetic responses from a considerable portion of the audience. His final emphasis was on the responsibility resting on the legislative branch of the government. His address is printed in full in another part of this issue.

Lively Debates Mark the Opening Session

An opportunity was then offered for the presentation of resolutions on any subject by any member, in accordance with Article IV, Section 2 of the Constitution. Various resolutions were thereupon submitted in writing and referred to the Resolutions Committee for consideration and report at a later session of the Assembly.

The lively interest and animated debates which marked the Assembly sessions in San Francisco began with the next order of business, which was action by the Assembly on the proposed Amendments of the Constitution and By-Laws, as published in full in the June JOURNAL. President Hogan announced that the constitutional provisions as to advance publication of these proposed amendments had all been complied with.

Secretary Knight thereupon read the first proposed Amendment, which was to Article II and was intended to broaden eligibility to membership in the Association. It was proposed by members of the House Committee on Rules and Calendar and was adopted without debate. The same approval was given to the amendment to Article IV, Section 3, the effect of which was to increase the number of Assembly Delegates to the House of Delegates from five to eight, four to be chosen each year, and to lengthen their terms from one to two years. There was a special provision that the terms of four of those elected at this meeting should expire at the adjournment of the Annual Meeting in 1940. A corresponding change as to the number of Delegates was also made in Article V, Section 3.

The Amendment to Article V, Section 6, providing that the terms of all State and Local Bar Association Delegates which would otherwise continue after the adjournment of the Annual Meeting of this Association in 1940, shall end at the adjournment of said meeting, and that thereafter the terms of such delegates shall end at the adjournment of the Annual Meeting on even numbered years, was approved without debate. The Amendment to Article V, Section 7, making a similar provision with respect to delegates from affiliated organizations, which is complimentary to the preceding Amendment was also adopted without debate.

Immediately after the vote on the Amendments to Article V several questions as to the effect of the Amendments upon particular State situations were put from the floor. Chairman Crump, of the Rules and Calendar Committee, in response to an inquiry, stated that the purpose of this as well as of the preceding Amendment was to make the

terms of all Bar Association Delegates expire at the adjournment of Annual Meetings instead of at various times during the year. Mr. Clark, of New York, wanted to know who would represent the affiliated organization at the meeting which succeeded the selection of the Delegate if it was provided that his term didn't begin until after adjournment. Chairman Crump replied that each organization already had a representative who would continue in office until his successor was selected and qualified. Mr. Haskell, Delegate from the Maine State Bar Association, called attention to a special situation in his State. That Bar Association meets only once in two years, and if its Delegate's term was to expire at the end of the 1940 meeting, there would be a vacancy in his State until the 1941 State Bar Meeting. Chairman Crump replied that the provisions of the Constitution permit the Bar Associations to select their delegates in such manner as they might determine. In California, for instance, the Delegate was selected by the Board of Governors of the State Bar. It was a simple matter for the Maine Bar Association to establish a method of selection between meetings, if necessary, which would take care of the situation. The same questions recurred later in the House, and were in part dealt with by verbal changes.

Methods of Nominating and Electing Officers Debated at Length

Secretary Knight then read the amendment proposed to Article VIII, Section 2, which would reduce the number of petitioners required to make a nomination for one of the four general officers of the Association from 200 to 100, of whom not more than fifty may be accredited to any one State, and for members of the Board of Governors from 200 to 50, of whom not more than twenty-five can be accredited to any one State; the purpose being to make it easier for members of the Association, if dissatisfied with the nominations by the State Delegates, to file independent nominations.

Mr. Harry P. Lawther, of the Dallas, Texas, Bar, was recognized and introduced by President Hogan as "the grand old man of the Texas Bar." Mr. Lawther criticised the proposed Amendment on grounds now generally familiar to the membership through his reiterated arguments at several Annual Meetings against the provisions of the existing Constitution as to the nomination and election of officers. He pointed out that the amendment would permit any 100 members of the Association residing in two States, none of whom would probably be a member of the House of Delegates,

to make a nomination for Chairman of that body. Not only that, but Article VIII, which provides for nominations by State Delegates and nominations, also by petition, further states, that nominations can only be made in the manner provided in that Article, which he said deprives two-thirds of the members of the House, who are not State Delegates, of the right to nominate a man for their own Chairman, except by petition.

Mr. Sylvester Smith, of New Jersey, in replying to Mr. Lawther, said in part:

"We must determine what kind of an office this office of chairman of the House of Delegates is. Is it merely a presiding officer, the chairman of the senate pro tem, or is this man in effect similar to the Lieutenant Governor or the Vice-President who presides over the deliberative body? That is the question. I cannot conceive of this office in the same manner in which my friend, Mr. Lawther, does.

"The Constitution says that the following officers of the Association shall be elected, and a chairman of the House of Delegates chosen from the membership of the House of Delegates. The purpose of that was to vest in the membership by petition, the right to select the officers of the Association; and with the adoption of this Constitution in Boston in 1936, it was clearly understood, after full debate, that the Chairman of the House is an officer of the Association who did more than simply preside, that he is a member of the governing body in between the sessions. For that reason, it was felt that this was an office which should be included with all of the other offices, and that the members themselves should by petition have a voice in their nomination, in order that the governing body, the electing body, the House of Delegates, might select between persons nominated by the members and those nominated by the State Delegate body."

Significance of the Particular Amendment Stated

Former Judge William L. Ransom, of New York, said that Judge Lawther's opposition to the amendment disregarded the nature and purpose of the change now under consideration. The amendment did not involve a change in the existing plan and structure of the Association except in one respect, and that respect was to make it easier for the average member of the Association to have a part in the processes of nominating any or all of the general officers of the Association.

"There are reasons," he continued, "that to my mind are sound and fair and good why the processes of nomination in this Association should not be left within the House of Delegates itself. The President or the Chairman of the House of Delegates and the Secretary and the Treasurer are general officers of this Association, not merely of the House. The Chairman of the House is not merely—I was going to say not primarily—the mere presiding officer of the House. He is an important member of the Board of Governors. He is the presiding officer of the State Delegates. He is a member of the Board of Editors of the American Bar Association JOURNAL, and I think it is highly appropriate and right that in the event dissatisfaction at any time arises with the nominations which are made by the exceedingly representative body, the one elected by mail vote by the members of the American Bar Association in each State, any member of this Association, no matter who he is or what office he holds or where he may be, can sign a nominating petition with a not-too-large number of other members; and the nomination thus made must be considered on the same basis as nomination made by the deliberations of the elected representative of each of the States.

"The only question here this morning so far as this amendment is concerned is a question whether or not it is advisable under the circumstances of the great disparity in the number of American Bar members in the various States, to reduce now in the moderate way in which this proposes, the number of signers required to make the will of individual members effective. I do not think that this is an unreasonable or dangerous reduction, and I hope it will carry because I believe it will tend to continue to strengthen the democratic processes of this Association."

The question was put and the amendment as to the number of required signers to nominating petitions was adopted.

Eligibility to Membership on the Board of Governors

The next amendment was to Article VIII, to broaden the field of eligibility for membership in the Board of Governors by providing that they might be chosen not only from those serving in the House at the time but also from those who had gained like experience through past service in the House. Chairman Crump explained the object of the amendment and moved its adoption.

Mr. Clarence E. Martin, of West Virginia, a former President of the Association, moved to amend by striking out certain words so as to make the provision in question read: "A member of the Board of Governors shall be chosen from each Federal judicial circuit and at the time of his nomination he shall be a resident of the circuit for which he is chosen." This eliminated all reference to present or past membership in the House of Delegates. Mr. Martin spoke in support of his position:

"I suggested that last year to the House of Delegates. I feel just as strongly about it now as I did then. The amendment offered by the Committee does not touch the point. It limits the selection by the House of Delegates to approximately 400 people.

"We have heard, just a moment ago, from Judge Ransom, that the democratic processes had been resorted to in order to make effective the provisions of the Constitution. It cannot be democratic to disfranchise 30,000 or 40,000 members. Let us let the membership have a right to vote for anyone whom they may choose, who are members of the Association or the Board of Governors."

Chairman Crump of the Rules Committee said in reply:

"This amendment of Mr. Martin gets down to fundamentals, and the decision depends entirely upon what this Association desires to do with reference to the manner of selecting its officers and whether or not it is in sympathy with the new Constitution, new By-laws, new set-up of the Association, including the House of Delegates, which

has tied the American Bar Association in with the State Associations and the local associations throughout the country into a cohesive whole, or whether we are going back to the old system under which nobody could possibly even get a resolution through the American Bar Association unless it was approved by the Executive Committee, which was all powerful in every respect and which ran the Association at its own sweet will.

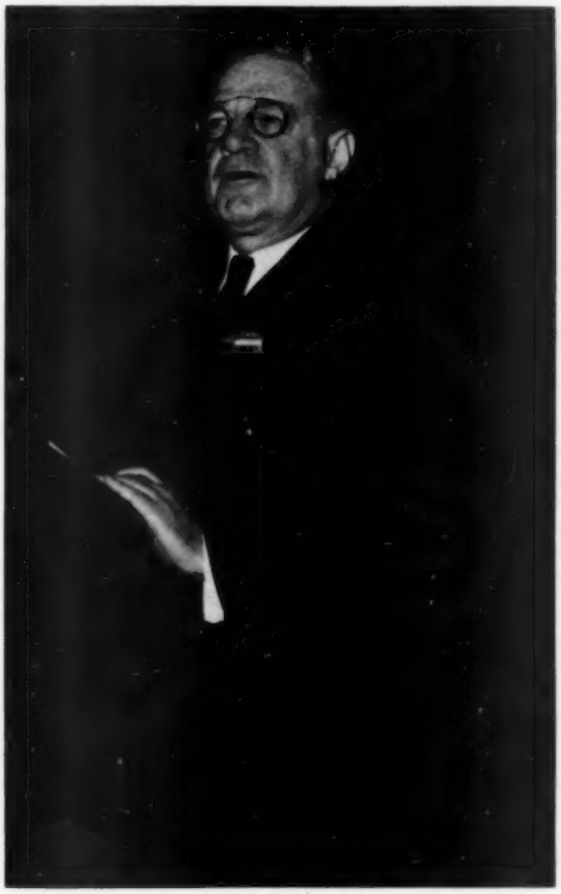
"Now, in order to cure that situation, of which there was a great deal of criticism through the rank and file of the Association throughout the country, as well as from the general public, and also in order to coordinate the various associations throughout the country, this new Constitution and the new By-laws were adopted in Boston by an overwhelming vote of the very large number there attending, after a very thorough argument of the proposition. Mr. Martin's amendment is merely an opening wedge to go back to the old system, and that is why the Rules Committee cannot go with him on this proposition. If the Association desires to go back to the old system, where nobody has any say except a small group of Executive Committee men who are practically self-perpetuating, then all right, let's go back to it, but let's do it with our minds open and our eyes open as to where we are going.

Board of Governors as the Administrative Agent of the House

"The Board of Governors of the new American Bar Association is in effect the executive committee of the House of Delegates, and the House of Delegates is the governing body of the Association, just as the Board of Governors is the governing body of the State Bar of California. Therefore, the theory, the philosophy, underlying this provision of the Constitution was that the Board of Governors should be selected from members of the House, since it was in effect merely an executive committee of the House of Delegates. However, in view of the criticism that that somewhat limited the field at times in certain circuits since the members of the Board are selected from circuits, the Committee have approved this suggestion made by several members of the House that the field be enlarged to include those who have at some time sat in the House. But what possible reason, I ask you, is there for putting on the Executive Committee of the House of Delegates a man who never sat in the House of Delegates and doesn't know the first thing about how the American Bar Association functions, or what the House of Delegates is supposed to do?"

President Hogan recognized Mr. Martin to speak further for his motion. Mr. Martin said in part:

"I yield to no man in the effort that was made to secure a democratic administration of the affairs of the American Bar Association. That movement started and certainly received its impetus in the administration of which I was an integral part. So that cannot be charged against me or against the movement that I now espouse. But may I offer this suggestion to you? The gentleman tells you that this is a move backward to the horse-and-buggy days. I differ from him upon that proposition, and the reason I do is this: I say that when you disfranchise 30,000 members of this Association



Gabriel Moulin

HARTLEY F. PEART
President, Bar Association of San Francisco

you are not enlarging the field. He says we have enlarged the field. Yes, but a very little bit. They have simply added at the most about fifty men to the selected group from which the Board of Governors may come. Upon this stage this morning we were told by your presiding officer that there were thirty presidents of State Bar associations. I venture the assertion that not two-thirds of them are members of the House of Delegates; certainly, not more than one-third are members of the House of Delegates. . . .

"Last week there met in this city the Conference of Commissioners on Uniform State Laws, which is composed of three men appointed by the executives of the respective States of this Union. I venture the assertion that not one-fourth of those men, all of whom are members of the American Bar Association and every one of whom is supposed to be a representative lawyer from his State, are members of the House of Delegates. Can it be said that those men have not a sufficient knowledge of the affairs of the American Bar Association to represent their constituents as members of the Board of Governors? I challenge that statement. It wasn't so in the past, and human nature is no different now from what it was ten or fifteen years ago."

Judge William L. Ransom, of New York,

pointed out the difficulties which formerly met Association representatives who were trying to present the views of the Bar as to legislation at Washington. They were told that the Association was not representative because it was governed by a small body which was not chosen by the profession of America. But when these changes were put into effect in Boston, a representative body was made the governing body of the Association. Talk about disfranchising 30,000 members—why, for the first time, under this plan every member of the American Bar Association in his own State, even though he didn't come to an annual meeting, had a voice and a vote in both the nominating and electing of the governing body of this Association.

"This is a question of whether you want the governing body of this Association to be a body elected by the 33,000 members of this Association at home in their States, by their own nominations and by mail ballot, or whether you want to turn the clock back and recreate an Executive Committee that is independent of the House of Delegates and becomes a kind of supergovernment, like that from which we broke away.

"You can have one kind of a Board of Governors or another kind. You can treat it as a subcommittee or a functioning committee of the House of Delegates, or as it is now, with the House of Delegates exercising the full control, or you can restore a board which is chosen at large from the membership and which tends to become again inevitably independent of the House. For my part, I believe thoroughly that if you want to have the voice of this Association continue to be what it has been in the last few years on vital issues in Washington, it is important that we take no chance of re-creating a governing body here, small in number, which will be pointed at in Washington as the voice of a few in the place of the very representative voice we now have through the House of Delegates, whose members are chosen not only by the 33,000 members of this Association but also by the various State and local Bar Associations with their more than 80,000 members. That isn't disfranchisement. That, to my mind, is the essence of democracy and sound policy." (Applause.)

Mr. Oscar C. Hull, of Michigan, rose to protest against any intimation that only men who are or have been members of the House of Delegates are fit to sit on the Board of Governors. He was well satisfied with the Delegate system but he did not think such a statement should go unchallenged.

The Martin Amendment Is Defeated

President Hogan thereupon put the question on Mr. Martin's proposed amendment to the pending amendment. It was defeated, and the Amendment as originally proposed was adopted. A further amendment to Article VIII, striking out certain provisions as to the former Executive Committee, no longer applicable, was adopted without debate.

Two delegates of the Assembly to the House having failed to register by 12 o'clock Monday, the vacancies were filled by the election of Albert J. Harno, of Illinois, and Ambler H. Moss, of Maryland. Vacancies in the State delegate membership, the chair announced, would be filled by the respective State delegations at the close of the session. The first session of the Assembly thereupon recessed.

Second Session of Assembly Hears Chairman Gay Report on Action of House of Delegates on Proposed Amendments—Committee on Survey of Sections and Committees Presents Drastic Proposals—Plan to Abolish Certain Committees Strongly Opposed—Assembly Decisions

THE second session of the Assembly was replete with debate and action upon a large number of matters relating to the organization and procedures of the Association. Consideration of the proposed amendments of the Constitution and By-laws was continued, and the remaining "Lawther amendments" were rejected by the large number of members present in the Assembly. The Committee on Survey of Sections and Committees presented and explained its painstaking report; creation of a Section on the Law of Taxation was voted. After spirited debate, the Assembly decided against the elimination of the small, expert Committee on Aeronautical Law. Members of the Junior Bar Conference and others contested vigorously the abolition of the historic Committee on American Citizenship, and their views were decisively sustained. On the other hand, the Assembly voted to discontinue the Committee on Commerce, later retained by the House.

IN opening the second session of the Assembly, held Wednesday forenoon, President Hogan announced that the House had completed on Monday its consideration of the several amendments to the Constitution and By-laws; and he asked Chairman Gay to report to the Assembly the action of the House.

Chairman Gay stated that the House had changed verbally the proposed amendment to Article IV, Section 3, of the Constitution as adopted by the Assembly Monday forenoon, as to the election of Assembly Delegates, by substituting the words "no two of whom shall be residents of the same State," for the expression "not more than one of whom shall be a resident of any one State." On motion the amendment as approved by the House was adopted by the Assembly.

The Chairman also reported that the House had adopted the proposed amendment to Article V, Section 7, with a clarifying change in the verbiage. The Assembly concurred in the amendment as adopted by the House.

The House had also considered the amendments to Article VII of the Constitution, and Article VIII, Sections 1, 2 and 3, proposed by Judge Harry P. Lawther, of Texas, and had disapproved them. The

House had also changed the proposed amendment to Article X, Section 1, of the By-laws, which would make the appointment of Membership Committees in any State or territorial group optional with the President, by further providing that such Membership Committees "may" be under the supervision of a general chairman appointed by the President, instead of making such provision mandatory. The Assembly concurred in the action of the House.

The Assembly Debates the "Lawther Amendments"

The long debated "Lawther amendments" were thereupon taken up. Secretary Knight read the amendment to Article VII, dealing with the election of Officers of the Association, and also the amendment to Article V, Section 11, of the Constitution, relating to voting in the House of Delegates.

Judge Lawther asked that the amendment to Article VIII be read also as the remarks would be in order mostly as a discussion of that proposed amendment. Secretary Knight complied and Judge Lawther thereupon presented his now familiar arguments against the method of nominations by State Delegates and the provisions of other sections of that Article.

The crux of the difference between the honorable Committee on Rules and Calendar and himself, he said, was the provision in Article VIII that nomination "can only be made in the manner provided in this Article." The effect of that is that if there are no nominations made by members of the Association by petition, the nomination by the State Delegates is the only one before the House; and since by express constitutional provision no other nomination can be made from the floor at the time of the meeting of the House that elects these men, the House has to accept the nomination of the State Delegates. He did not think that this was either right or fair.

Under present conditions, he continued, practically two-thirds of the members of the House were disbarred, as such, from nominating, the man to preside over their own deliberations, and as far as the provision for nomination by petition for Chairman of the House of Delegates was concerned, he thought it essentially wrong that members of the Association who do not belong to the House should have the right to make a nomination for the office of Chairman of the House.

Judge Lawther added that he had no personal end in view, and he simply offered the amendments because he believed they would be for the good of the Association. The whole thing had been argued at Boston and at Cleveland, but the question was not whether the matter had been settled at those places, but whether it had been settled right. He moved the adoption of the proposed amendment to Article VII.

Chairman Crump, of the Rules and Calendar Committee, stated that the whole matter boiled down to the question of whether the sessions of the Association and House were to be turned into political conventions or devoted to constructive work. The philosophy back of the present Constitution was that all nominations should be made, and made known to the whole membership of the House and the Association, well in advance of the annual meeting. The State Delegates, who constitute the nominating body of the Association, are certainly the most democratic body that could be created because they are elected in each State by the members of the American Bar Association in those States. The Rules Committee recommended that the amendments be not approved.

The question was then put and the several "Lawther amendments" were disapproved.

Mr. William L. Ransom, of New York, asked leave to withdraw, so far as consideration this year is concerned, the amendment which he had proposed to Article VIII, Section 2, of the Constitution so as to provide that in addition to the present method of nominating the Chairman of the House, any fifteen members of that body might file a nominating petition for such office. He said that he did this in order that the House might proceed with important matters on the calendar for the day.

The Committee on Survey Reports

President Hogan recognized Mr. Stinchfield, of Minnesota, Chairman of the Committee on Survey of Sections and Committees. This Committee, the President explained, had been charged with the important duty of surveying the work of the Association with respect to Sections and Committees and their activities, and had submitted a report recommending the creation of one Section and the discharge of several Committees. This report, if adopted, would require certain amendments to the By-laws.

Chairman Stinchfield presented the results of his Committee's work as follows, in part:

"This Survey Committee was asked to go over the Sections and Committees of the Association in an effort to determine whether there was any way the Committees or Sections could be consolidated or any of them eliminated. The report of this Survey Committee is that some thirteen Committees be discontinued, that one new Section be established, that new Section taking the place of one of the thirteen Committees whose demise was suggested in the report.

"The Board of Governors has, I believe, approved abolishing some six or seven of the thirteen Committees as to which the Survey Committee spoke, but has disapproved recommendations of the Survey Committee as to the rest.

"First of all, may I emphasize to you that there is no member of this Survey Committee who has had the slightest desire to cast any reflection upon the work or the personal qualities or the ability or the sincerity or the devotion to the American Bar Association of any Committee chairman or any Committee member, either of the Committees as they now exist or in any year heretofore. But this Survey Committee has felt this: We have existed, I believe, some sixty years. I haven't made a minute examination, but if any of you find in that period of time a record of any Commitee or Section that has ever been abolished, it would be interesting news to this Committee. There have been establishments of new Committees and new Sections, and in passing I call your attention to the fact that it is said that at Cleveland last year the House of Delegates alone established one hundred new Committees. There have been the establishment of these Sections and Committees, and no deaths occurred so far as can readily be discovered. . . .

Reasons for Reducing the Number of Committees

"There is no end to the work which the American Bar Association can do. There is no end to the work which it ought to do. There is a limit to the work which it ought to undertake, if undertaking that interferes with the essential work which the Association should do. With regard to determining what

was the essential work of this Association, this Survey Committee has examined the Sections and Committees, and in each case its recommendation as to the discontinuance of a Committee has been arrived at only with that feeling in mind."

Chairman Stinchfield took up seriatim the Committees and Sections referred to in his report. He suggested that, in their discussion of the various recommendations, the members take into consideration the financial condition of the Association. The only way to save money was to save money, and the only way to do that was to reduce expenses. The Sections and Committees spend the money of the Association, and if any of these were doing work not essential to the welfare of the profession or of the Association, they should no longer function. He then outlined his Committee's reasons for recommending the abolition of various Committees.

President Hogan announced that the recommendations of the Committee would then be taken up separately. The first was that a Section on Taxation be established and that the Standing Committee on Taxation be abolished. The question arose as to the proposed amendment of Article X, Section 1, of the By-laws, striking out the provision for a Committee on Federal Taxation. If this amendment to the By-laws were adopted, it would then be up to the House and Assembly to create a Section on Taxation. On motion, the proposed amendment to the By-laws abolishing the Committee was adopted.

Debate as to the Committee on Aeronautical Law

President Hogan then recognized Mrs. Mabel Walker Willebrandt, Chairman of the Committee on Aeronautical Law, who spoke against the recommendation that this Committee be abolished.

Mrs. Willebrandt called the Assembly's attention to two facts. One was that the Board of Governors had considered the matter and disapproved the abolition of the Committee. The other was that the House had already approved the recommendations of the Committee for this year, which provided for three tasks to be done for the coming year. These were all important and the Committee believed that these could not be performed in any other way than by the continuance of the Standing Committee. So far as the science and development of the art of aviation and the judicial interpretation following that was concerned, all recognized that these were considerably ahead of ordinary basic law. At present the fundamental question of achieving uniformity of regulation and of basic law governing licensing and flying is now dealt with in the Act of 1938, which gives considerable increase of power to the Civil Aeronautics Authority.

The Committee Aids the Government

Mr. Oswald Ryan, member of the Authority, said that, as one who almost daily for ten months had been moving on an uncharted sea in this new branch of the law, he would be very happy to agree that the law governing this new development had reached a settled state—that it had already arrived. Unfortunately he did not think such was the case. He had had some experience as Chief Counsel for the government in the field of Federal utility law for several years and he knew of the great help which had come from the Public Utility Section of the Association. Even the Federal regulatory public utility law had not yet reached the end of its trail.

As far as aeronautical law is concerned, in his opinion, we are standing on the threshold of what will be one of the greatest expansions in any field in the history of the modern world. He would also like to call attention to the fact that civil aviation is the backlog of military aviation and for this reason also there was sure to be a development of problems of great moment at every step and turn. Mr. Ryan stated with great emphasis that the Civil Aeronautics Authority would view with great satisfaction the continued help of the Standing Committee of the American Bar Association.

Mr. Benjamin L. Marx, of Hawaii, was recognized and read a telegram from Garner Anthony, President of the Bar Association of Hawaii, protesting against the abolition of the Committee on Aeronautical Law. Mr. Marx made a brief statement in support of this position.

Mr. Haywood Scott, of Missouri, favored supporting the recommendations of the Survey Committee. It had done its work well, and while friends of this or that Committee could always furnish reasons why it should not be abolished, he regarded the Committee's recommendations as sound. Incidentally, he thought the Bar Association might do well to set an example to the country in reducing expenditures at this time.

Retention of the Committee Is Voted

Mr. J. E. Yonge, of Florida, opposed the recommendation. He thought the work of the Committee on Aeronautical Law was broader than the concept of the Committee on Survey conceived it to be. The development of the industry has been so rapid that the law in this field is continually presenting new aspects. As to the matter of expense, the Committee was allocated $100 last year and has spent only about $9.00 of that. In this connection Mr. Walter S. Fenton, of Vermont, a senior member of the Board of Governors, suggested that it might be well for members to keep their feet on the ground on propositions of this sort and not be misled by a slogan about saving money, when the expense of reporting the debate on the stenotype so far probably would exceed the amount saved by abolishing the Committee.

Mr. E. Smythe Gambrell, of Georgia, stated that some years ago he had been a member of the Committee and he could say from personal experience that the making of fundamental law for aeronautics had just begun. He believed that it would be nothing short of tragic at this time to suspend expert treatment of the subject. He thought the Committee ought to be preserved, at least for the time being.

President Hogan thereupon put the question, which arose on the motion to adopt an amendment to Article X, Section 1, line 10, which would abolish the Committee on Aeronautical Law. He added that the Board of Governors disapproved the proposal to abolish the Committee. A vote was taken and a division called for. The amendment abolishing the Committee was lost.

Retention of the Committee on Citizenship Urged

The next question before the Assembly was the recommendation of the Committee on Survey to amend the By-laws so as to abolish the Committee on American Citizenship.

Mr. Ralph R. Quillian, of Georgia, member of the Junior Bar Conference and Chairman of the Committee on American Citizenship, was the first speaker in opposition. The purpose of the Committee on American Citizenship, he said, formed, not to be of

service to the lawyers of the country, so much as to the people of the United States. He would not outline the work which had been performed by the members of the Committee before the younger members of the Association undertook to share in its labor. That record is written in the reports since 1921. During the past two years, implemented by the organization and facilities of the Junior Bar Conference, the American Citizenship Committee had endeavored not only to carry to the people the message of good citizenship, but also to acquaint them with the problems of government in order that they might be better citizens. It had been suggested that this was not the concern of lawyers and members of the Association. However that might be, the matter of improvement in the administration of justice was unquestionably their concern, and the question of citizenship and the improvement in the intelligence quotient of the electorate of the country was inextricably related to and bound up with the improvement in the administration of justice. He continued:

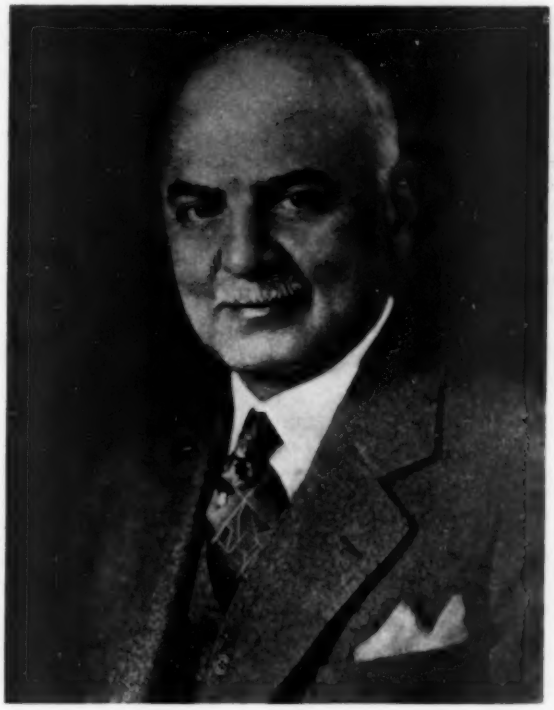
"I take it that you would agree that this question of government and informing our people as to matters of government generally, its functions and its relation to that long-suffering individual so often referred to as 'the man in the street' is one of primary concern. The expression of new philosophies of government, accompanied by what we may politely term as vigorous measures in effectuating the ends sought by such governments, has by sharp contrast focused the attention of our people on the form of government under which we live in continued enjoyment of the privileges and the guarantees of individual liberty afforded by the Constitution. I say to you very earnestly that the perpetuation of our democratic institutions can be effected only by imparting to our citizens an understanding of the advantages of such a system.

"This Committee has undertaken the task of sharing in those efforts. Instead of that work being unnecessary, I respectfully submit that no other work of this Association is more important. Instead of abolishing the Committee, its activities should be supported and participated in by every member of the Association."

The Committee's Contribution to Public Relations

Mr. William L. Ransom, of New York, expressed very earnestly the hope that the Committee would not be abolished. Not only is this one of the historic Committees of the Association—a Committee with which great names and great work have been identified ever since it was created—but right now it is doing things of vast importance to the Association and the public. He could not agree with the Chairman of the Survey Committee that it is no function of the Association to keep everlastingly at the task of presenting to the people of this country, the non-lawyers, the fundamentals of constitutional government and the philosophy of free institutions. He concluded:

"In this Association now we are struggling with the problem of public relations, of finding the money and devising the means for putting this Association favorably before the people of this country, by radio and other means, the sound philosophy for which this Association stands. The problem is one of money to a considerable extent, and yet within a month, under the arrangements made by the young men of this Committee, this country was thrilled with a broadcast to which the great artists of the screen and the radio contributed, which brought out the story of the American Bar Association as it has never been put on the air before. The cost of it? These young men of this Committee arranged for talent and radio time that you could not buy for a hundred thousand dollars, and it cost this Association nothing.



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HON. ANGELO ROSSI
Mayor of San Francisco

"Now, when you are talking about money and talking about saving money in order to be able to take up things like public relations, in which I firmly believe, let's not throw aside the great resources which we already have in hand. It would be a mistake to haul down the flag on the historic attitude of the Association and its work through this Committee, now so well carried on."

The Lawyer's Duty as to Good Citizenship

The Chair recognized Mr. Paul F. Hannah, Chairman of the Junior Bar Conference Section of the Association. Mr. Hannah said in part:

"Gentlemen, if there ever was a need in the history of this Association of a Committee on American Citizenship, that need has now reached new heights. It has been suggested by the Chairman of the Committee seeking to abolish the American Citizenship Committee that it is not the function of the lawyer to interfere in this situation. I agree thoroughly with the preceding speaker who denied that that philosophy was sound for this Association or for any organization of lawyers, whose traditions have been entirely to the contrary; but I should like to point out to you gentlemen that the position of the Bar, if the ideals and thoughts of the groups that I have mentioned should prevail in this country, will be such that this Association and other associations like it cannot exist, and the

lawyer as the instrument of free speech will be abolished. So we have a personal interest as well as interest as citizens in this question.

"It has been suggested that there are other organizations better equipped to perform the work of developing American citizenship, but I should like to recall to you gentlemen that in the Supreme Court fight a few years ago the lawyers led, because of their training and because of their understanding of the traditions of the country, in carrying the real issues before the people—issues which were sought to be obscured and which might not have been understood had the lawyers not acted. . . .

"This Committee has spent very little money relatively speaking during the past few years. It had an appropriation last year of $2,000, one thousand of which was transferred to the Junior Bar Conference. The Chairman of the Survey Committee was misled when he said that the Conference would like to take over the functions of this Committee. On the contrary, the officers feel that to have a Standing Committee of the dignity and importance which such a Committee bears will aid incalculably in carrying on the work. I hope that the recommendation of this Committee to abolish the American Citizenship Committee will be defeated."

President Hogan here put the question on the adoption of the proposed amendment to the By-laws abolishing the Committee. The amendment was defeated.

Abolition of the Committee on Commerce Carried

Mr. Harold J. Gallagher, of New York, spoke against the next recommendation, which was for the abolition of the Committee on Commerce. His primary objection to the proposal was one of principle. In his opinion, there should be a Standing Committee to present the Association's views or to advise the Association on questions which pertain purely to legislative matters. The Sections, he said, performed a very fine service as an educating force and by furnishing a forum for discussions by people interested in specialized fields, but when it comes to representing the American Bar Association before the Congress of the United States, it is unquestionably better to have an Association Committee, with a continuity which is not likely in the case of a Section Committee. The question of expense is *de minimis*. The Commerce Committee spent practically nothing in the last two years.

Mr. Jacob M. Lashly, of Missouri, Chairman of the Section on Commercial Law, did not wish to say anything as an advocate in the matter. He was inclined to think, however, that Mr. Gallagher and the other members of the Committee, who had done a very fine job, had touched on a question involving to some extent a clash of philosophy as to the government of the Association. That question was whether it should be governed, and have its detail work done, by Sections or Committees. The Survey Committee had found certain points at which these clashes were evident and some borderline cases apparently where different views could hardly be reconciled. He was sure that all would appreciate the difficulty which the Survey Committee had had in trying to harmonize the two views of handling the detail work of the Association.

As to the pending proposal, it wasn't a question of whether the Committee on Commerce had done a good job. They certainly had and they hadn't spent much money. But a Section on Commercial Law had been created and it could not work very well on the subject of commerce, unless it worked in the same field in which the Committee is working. If the Association desired to have a Committee to do specialized work in that field, the Section on Commerce Law would not object to coordinating its activities, work and study with that group. There would be no trouble about that. What he was saying would apply also to the Special Committee on Securities Laws and Regulations. If the Association desired to continue these two Committees, the Section on Commercial Law did not desire to oppose it.

President Hogan put the question and the proposed amendment abolishing the Committee prevailed in the Assembly. Later it was defeated in the House, and so was not effective.

Immediately afterward, the recommendation of the Survey Committee and the Board of Governors that amendments to the By-laws abolishing the Committee on Noteworthy Changes in Statute Law be adopted was approved.

The second session of the Assembly thereupon adjourned.

Third Session of Assembly Hears Memorial to R. E. L. Saner—Association Medal Presented to Edgar B. Tolman—Award of Merit to State and Local Bar Associations for Outstanding Achievements—Senator Byrnes Speaks on "The Constitution and the Will of the People"

THE Wednesday evening session of the Assembly was, as usual, a distinguished occasion, with the give-and-take of debate and vote laid aside. An eloquent tribute was paid to the memory of Former President R. E. L. Saner, of Texas; the passing of 258 other members was noted. The American Bar Association Medal for distinguished and life-long services to jurisprudence was bestowed on Major Edgar Bronson Tolman; Mr. Walter P. Armstrong made the eloquent presentation. The State Bar of South Dakota and the Dallas Bar Association received certificates of merit for constructive and outstanding work. United States Senator James F. Byrnes, of South Carolina, was presented; he gave a thought-provoking address on "The Constitution and the Will of the People," again demonstrating the usefulness of the Association and its

Assembly as an open forum for the presentation of widely varying but well-reasoned views on vital National issues. Several distinguished guests of the Association were presented and were heartily greeted.

AFTER calling the third session of the Assembly to order Wednesday evening, President Hogan referred impressively to the fact that—

"During the past year, Robert E. Lee Saner of Texas, great citizen, one time President of the American Bar Association, passed to his reward. The Association that he at one time presided over pauses tonight to pay tribute to his services to his profession and his country. Mr. David Andrew Simmons, of the State of Texas, one-time President of the Bar Association of Texas, presently a member of the Board of Governors of this Association, will deliver that tribute."

Mr. David A. Simmons gave the following memorial tribute:

ROBERT E. LEE SANER

Before the corroding finger of time dims the records of this man's accomplishments and stills the hearts of those who knew his virtues, it is fitting that some memorial be inscribed upon the tablets of our professional memory in honor of one who served our association so well.

Some anti-social beings walk the earth leaving ruin and destruction in their wake. As though to compensate for these, we find many souls whose lives exemplify the doctrine that it is more blessed to give than to receive. They give of themselves and their substance to every worthwhile enterprise that comes to their attention. They are the givers, the burden bearers, the well-doers, the good Samaritans. Though they may be weary and heavy laden themselves, with shining eyes and uplifted faces they move ever forward to higher ground, carrying the weaker ones with them. Among these valiants was Robert E. Lee Saner.

In his long climb from obscurity to the top rank of a great profession, he never forgot the way from which he had come, nor failed to lend a helping hand to those who came behind. A few examples will suffice: He was both patron and practitioner of the art of public speaking. Having won the medal for oratory at Vanderbilt University as a youth, he never tired of encouraging others in that field. He established an oratorical contest at Southern Methodist University in his home city of Dallas, both to give proper recognition to ambitious and worthy young men and to provide a forum for the discussion of subjects important in the perpetuation of a democracy. This same motive inspired him to initiate, in the high schools of the land, public speaking contests on constitutional subjects. Who can estimate the benefits to the participants and to this nation of such a discussion in thirteen thousand high schools in one year? Or of the National Intercollegiate Oratorical contest which he helped to initiate in 1925?

His legal education was obtained at the law school of the University of Texas, a tax supported institution. His sense of indebtedness was so profound that he gave a lifetime of devoted service to the school, far beyond his obligation as alumnus and attorney.

To his party, he rendered a full measure of support. He believed in our form of government and in the necessity and desirability of maintaining the two-party system.

But it was to his profession and its organization that he devoted his time and talent, without stint or measure. No task was too burdensome, no assignment too trivial, no distance too great for him to travel, if the doing and going might prove beneficial to the organized bar. He realized that the machinery of organization that had served our profession in the past would prove inadequate for the needs of the future. His voice was among the first to call for a broadening of the base of the national association, for a real democratizing of the bar. He early realized the tremendous possibilities of the JOURNAL, and labored in season and out to make it the powerful instrument it has become.

The milestones of his life and career as a man and a lawyer have been recorded in the JOURNAL.[1] Some of these we have attempted to appraise. By what standard shall we measure the quality that marked him among the lawyers of his generation—his infinite capacity for friendship?

No more modest, kindly, sympathetic man has walked among our fellows. These qualities drew to him, as if by magnetic attraction, the respect, love, and affection of all within the circle of his charm. He early learned the truth of the inscription:

"Back to the very first beginnings,
Out to the undiscovered ends;
There's nothing been found worth the wear of winning,
But laughter and the love of friends."

Undoubtedly, we may say of him:

"He achieved success, for he gained the respect of intelligent men; and the love of little children; he filled his niche; and he left the world a better place than he found it."

President Hogan then said: "With that beautiful tribute to a really great man in our minds, may I ask you all to rise and stand silent in tribute to Robert E. Lee Saner and two hundred and fifty-eight other members of the American Bar Association who died during the current year?"

The audience arose and stood in silence for a brief period.

Award of the Association Medal to Major Tolman

"In 1928," declared President Hogan, "the members of the American Bar Association journeyed to the Pacific Coast and met in that glorious northwest city of Seattle. At that meeting there was established a fund to provide for the award, annually if merited, of the American Bar Association's gold medal for distinguished service in the cause of jurisprudence. Many notable men of our profession have received that medal. There have been years when it has not been awarded to anyone. It is not awarded for any spurt in professional or civic endeavor. It is not awarded for any achievement, accomplishment, or duty done in one year. It is awarded for distinguished services through a lifetime, to the great cause of jurisprudence.

"Unanimously this year, the American Bar Association selects one of its great sons, one of the country's great sons, for this, the outstanding award of our National organization. It has been awarded to Edgar Bronson Tolman; and the award will be made by

(*Continued on Page 702*)

1. A. B. A. JOURNAL, Vol. XXIV, p. 977 (December, 1938).

HOUSE OF DELEGATES

First Session of House of Delegates Hears Report on Association's Financial Condition—Amendments to Constitution and By-Laws Approved—Certain Committees Discontinued—Members of Board of Governors Elected

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of the Constitution, so as to provide for the election of eight Assembly delegates to the House of Delegates, four of whom should be elected each year for a two-year term, was approved, with a verbal change suggested by Frank M. Drake, of Kentucky, to the effect that "No two of whom shall be residents of the same state." The corresponding amendment of Article V, Section 3, was likewise approved by the House.

Proposed amendments of Article V, Sections 6 and 7, as to the expiration of the terms of office of State Bar Association Delegates, local Bar Association Delegates, and delegates from affiliated organizations of the legal profession, were approved, upon the recommendation of the Committee on Credentials and Admissions and the Committee on Rules and Calendar. At the suggestion of John Kirkland Clark, of New York, the amendment of Article V, Section 7, was verbally changed to relate to "The term of any delegate succeeding any such delegate."

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Eligibility to Board of Governors

The proposed amendment of Article VIII, Section 3 (a) so as to broaden the eligibility for nomination and election to the Board of Governors by making eligible also those who have had experience as members of the House of Delegates even though not members of the House at the time of nomination and election, was next considered. Delegate E. Paul Mason, of Maryland, opposed the amendment as "undesirable." Delegate W. Eugene Stanley of Kansas, declared that "It is necessary to have upon the Board of Governors men with experience, men who have had experience in the House of Delegates. On the other hand, a man having obtained that experience in the House of Delegates, knowing the procedure of the Association, familiar with the work of the Association, might be very valuable as a member of the Board of Governors, although his term may have expired." State Delegate Conrad E. Snow, of New Hampshire, referred to the fact that "the Board of Governors was in effect a Committee of this House," and added that "If that is so, membership in the Board of Governors should be limited to the present membership of the House." The proposed amendment was put to a vote and was adopted, with scattering votes in opposition.

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The Secretary certified the due nomination of the following persons for membership on the Board of Governors: First Judicial Circuit, George R. Grant, of Masachusetts; Second Judicial Circuit, Philip J. Wickser, of New York; Sixth Judicial Circuit, Carl V. Essery, of Michigan; Tenth Judicial Circuit; G. Dexter Blount, of Colorado. On motion duly carried, the Secretary cast a unanimous ballot for their election.

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Various Committee Recommendations Approved

In the absence from the House of Ira S. Lillick, of California, Chairman of the Committee on Admiralty and Maritime Law, Charles A. Beardsley presented the report of the Committee and moved the adoption of its recommendations, which had been approved by the Board of Governors. The resolution, which was to the effect that the House affirm its support of a bill prepared by the Committee and approved by the Association, as to the rule of damages in certain maritime cases, was carried.

Mrs. Mabel Walker Willebrandt, of the District of Columbia, presented interestingly the report of the Standing Committee on Aeronautical Law, and moved the adoption of its several recommendations, all of which were approved. After receiving and filing the report of the Committee on American Citizenship, headed by Ralph R. Quillian, of Georgia, the report of the Committee on the Sesquicentennial Celebration was presented by Chairman J. Harry LaBrum, of Pennsylvania, who moved that the Committee be discharged as its work had been completed. The motion was carried.

Chairman William A. Schnader, of Pennsylvania, gave the report of the Committee on State Legislation and moved the adoption of its recommendation "that every State Bar Association which has not as yet done so be urged to create a Committee on Uniform State Laws for the purpose of furthering the passage of State legislation approved by the American Bar Association." For fifty years, he said, the American Bar Association had been approving and indorsing for passage by Legislatures various Acts which are initiated either here or with the National Conference of Commissioners on Uniform State Laws. Until this last year it had never done anything officially to further the passage of the Acts. President Hogan had instructed the Committee on State Legislation last year to undertake that task. It is a large undertaking for only two members of this Association in each State to handle and the Committee felt that it needed the cooperation of the State Bar Associations in order to get results, and with that thought it had asked the Association to adopt the resolution just presented. The resolution was thereupon adopted.

The report of the Committee on Amendments and Legislation Relating to Child Labor was filed, and on motion of Charles A. Beardsley, of California, the Committee was discharged. The report of the Committee on Communications was next received. When consideration of the report of the Committee on Judicial Salaries was begun, former Judge Charles M. Thomson, of Illinois, stated that he had a resolution which he wished to submit in connection with the report of that Committee. Owing to the lateness of the hour, Mr. Ransom, of New York, suggested that consideration of the report and resolution be deferred until there was a full attendance of the House.

The first session of the House recessed at five-thirty o'clock.

Gabriel Moulin

Second Session of House Votes to Hold Mid-Winter Meeting in Chicago — Committee Reports Heard and Considered — Important Action as to Securities Laws and Regulations — Committee on Jurisprudence and Law Reform Offers Notable New Program

THE SECOND SESSION of the House was marked by lively debate on several subjects. The House voted to hold a mid-winter meeting, probably in Chicago next January, after being warned of the budgetary problems. A resolution to start a campaign for increased salaries for all Federal judges was vigorously debated. The opposition was principally that the time is unpropitious, as the need for economy should prevail. The resolution was defeated. Supervision of Association and Section printing became involved in a parliamentary issue, and a limiting resolution was adopted. Important action was taken as to securities laws and regulations. A notable new program offered by the Committee on Jurisprudence and Law Reform was sanctioned. A controversial issue as to Bar Association "rosters" and the Canons of Ethics was raised, debated and deferred. Rapid progress was made with the formidable calendar of Committee reports.

AT the second session of the House of Delegates, held on Wednesday afternoon, Chairman Guy R. Crump, of California, presented on behalf of the Committee on Rules and Calendar a resolution that a mid-winter meeting of the House of Delegates be held at a time and place to be fixed by the Board of Governors, the expense to be borne in a manner similar

to that fixed in a resolution which called the mid-winter meeting last January.

Louis E. Wyman, of New Hampshire, Chairman of the Budget Committee, said that "a meeting may be desirable but, nevertheless, I believe we should operate within our income." Walter P. Armstrong, of Tennessee, declared that in his opinion "the work of this House is the most important work of the entire Association, and I think a mid-winter meeting should be a first charge on the funds of the Association." Joseph W. Henderson, of Pennsylvania, also of the Budget Committee, added that, "I personally believe a meeting of the House of Delegates is a very good thing to have, but we of the Budget Committee therefore desire your support when we make the corresponding cuts of Committees and Sections, which we have to do to try to balance this budget to provide the necessary expense for the mid-winter meeting." The motion directing the holding of such meeting was put to a vote and carried.

The report of the Committee on Judicial Selection and Tenure was presented by Chairman John Perry Wood, of California. Fred B. H. Spellman, of Oklahoma, Chairman of the Committee on Bar Journal Advertising, outlined the report of that Committee. Both reports were received and filed.

Resolution as to Increased Salaries for Federal Judges

The report of the Committee on Judicial Salaries, headed by Walter S. Foster, of Michigan, was next taken up. In connection with this report, former Judge Charles M. Thomson, of Illinois, offered the following resolution:

"WHEREAS, It was resolved by the House of Delegates of the American Bar Association at its meeting held in Chicago in January last, that it was the opinion of the House, as well as the very general opinion of the members of the Bar, that the compensation being paid to our Federal judges is inadequate and should be increased; and further that in the opinion of the House of Delegates of the American Bar Association this matter should now have the careful consideration of the Committee of the Association on Judicial Salaries, and said Committee was requested to submit to the House a form of appropriate legislation making proper and adequate increases in the compensations paid to the judges of the Federal Courts; and

"WHEREAS, Said Committee has submitted a report to this House for its consideration at its meeting held in San Francisco, containing as an appendix a form of Bill fixing the salaries of the judges of the Courts of the United States; now, therefore,

"BE IT RESOLVED, That the House of Delegates of the American Bar Association respectfully recommends to the Congress of the United States that a substantial increase be made in the salaries of the judges serving in all of the Courts of the United States.

"(2) That copies of this resolution be forwarded by the Secretary of this Association to the chairmen of the Committees on the Judiciary of the Senate and of the House of Representatives of the Congress of the United States, and

"(3) That the Special Committee of this House on Judicial Salaries be, and the same is continued, and said Committee is further authorized and directed to submit a form of appropriate legislation making proper and adequate increases in the compensations paid to the judges of the Federal Courts, such as the form attached to the present report of the Committee as an appendix, or its equivalent, to the Chairmen of said Committees of the Congress, requesting that such legislation be introduced in the Senate and House of Representatives for consideration at as early a time as practicable."

The Committee had reported that in its opinion the present is not a propitious time to seek to bring about increases in Federal salaries and that the prevalent sentiment for economy in Federal expenditures would make it inadvisable for the Association to initiate such a step at this time, irrespective of the merit of such a proposal under other circumstances. President Hogan seconded and supported Judge Thomson's motion.

Present Time Deemed Unpropitious for Such a Move

Former Governor John M. Slaton, of Georgia, opposed the motion, and declared that in the presence of the "economic depression" the fact that the salaries of Federal judges are now subject to taxation illustrates the necessity for diminishing taxes and the tax burdens upon all citizens, but does not justify an increase in the salaries of judges. "I do not think that we ought," said he, "to add the prestige of our authority to an increase at this time in public expenditure."

L. Ward Bannister, of Colorado, said that "This is no time, when we are in a great economic crisis, to increase the salaries of the judges of the United States. It is true, as the governor has just said, that the indebtedness of the Federal Government at the present time is between forty and forty-five billion dollars. It is also true that this last year the deficit has increased by something like five billion dollars. It is true that the total indebtedness of this country. Federal, State and local, is sixty-eight billion dollars, and it is as certain as the sun sets that unless this country effects economies, and does it soon, we are going to run into one of the greatest catastrophies in American history. There is no escape. Economists tell us that. Every businessman who thinks about it knows that that is true, and it seems to me that this great American Bar Association should take the lead in effecting economies in the government of this country, and that we should be one organization in America that refuses to dip its hands further into the public treasury."

A. G. C. Bierer, Jr., of Oklahoma, agreed with what had been said in opposition to the motion, and further suggested "that it should be more the concern of this Association to worry less about getting adequate compensation for the judges and more about getting adequate judges for the compensation." Judge James F. Ailshie, of Idaho, also opposed the motion and said that in his judgment, "more than half of the Federal judges who have been appointed within the last quarter of a century are getting a better salary today than they ever earned in the practice of the law."

Arthur M. Fowler, of Tennessee, declared that "I think it would be a serious mistake for this Bar Association, complaining as we are of extravagance of the government, to ask the government, in matters which affect us, to increase expenditures." Mr. Drake, of Kentucky, also opposed the motion.

Resolutions as to Federal Judicial Salaries Are Defeated

Whereupon the previous question having been called for, the votes in the negative prevailed and the resolution was not adopted.

Mr. Bannister, of Colorado, then took the rostrum to say that "We ought not take the position that the salaries of Federal judges are adequate. Our reasons are the economic depression in which we are involved." He offered this resolution:

"WHEREAS, It is the sense of the House of Delegates that the salaries of Federal judges are inadequate;

"WHEREAS, It is the sense of the House of Delegates that the Federal budget should be balanced as soon as possible; therefore,

"RESOLVED, That the salaries should not be raised at the present time."

A vote on this resolution was taken, and the same was also rejected.

Vigorous Debate as to Association and Section Printing

The special order of business for Wednesday afternoon was a resolution by George Maurice Morris, of the District of Columbia, with respect to the report of the Board of Governors which dealt, among other things, with the authority granted by it to the Special Committee on Printing, Publication and Indexing. The Printing Committee had been created in the administration of President Vanderbilt and directed to submit a plan for greater economy and effectiveness in the printing done at Association expense. As constituted following the May meeting of the Board of Governors, it was composed of a member of the Budget Committee (Mr. Henderson), a Section Chairman (Mr. Harold J. Gallagher), a member of the Board of Editors of the JOURNAL (Mr. Ransom), an official of a State Bar Association (Mr. Karl Goldsmith), and a member at large (Mr. William C. Woodward). The report of that Committee, transmitted to the House by the Board of Governors, had stated in part:

"In a quasi-public Association devoted to improving the administration of justice, advancing the science of jurisprudence, and furthering the interests of the legal profession and the public, the printing and distribution of printed matter in various forms are traditionally the chief mode of bringing its work and its views to the attention of all concerned. The effectiveness of such an Association therefore depends in large part upon the suitability and effectiveness of its printed matter, both as to contents and form.

"With the income of the Association received almost wholly from dues and amounting to about $225,000 a year, the expenditure of fully half of that sum for printing presents the major problem in Association economy, if funds are to be available for other necessary expenses and for carrying on work which does not consist wholly of printing and mailing.

"There is a well-known disposition on the part of lawyers to want to print everything in full and at length. Probably no association in any other field of voluntary endeavor is as much addicted to this as the American Bar Association. Lawyers print at length, although few people, even lawyers, read at length. Editing in the interests of succinctness and effectiveness, with elimination or summarization of the unimportant, is rarely resorted to. Practically every other organization selects, edits, condenses, summarizes, and arranges its printed material so as to command and hold the attention and interest of those who see it. Modern typography and arrangement are utilized strikingly to that end. With the American Bar Association the speech in full, the paper in full, and the proceedings in full, have been sacrosanct—printed and mailed out virtually as a matter of routine, without thought as to whether or not anyone will read them in that form. Any suggestion that anything less or anything else be done provokes vehement protest from the authors, as though impious hands were being laid on sacred privileges long vouchsafed by the Bill of Rights. Aside from the staggering burden of *cost*, such a course simply is *not* effective in this day and age. . . .

"The tasks of saying what shall and shall not be printed and in what form, and to what extent condensations and summaries shall be substituted for full length, cannot fairly be left, in an association of lawyers, to the Headquarters staff. The authors of speeches, papers and reports have strong views as to their matchless values, if printed in full. Employees of the Association should not be expected to withstand and say "no" to such vociferated demands by members prominent in the Association. Such functions can be exercised only by a suitable agency composed of members of the Association, acting under the authority of the Board of Governors."

Action of the Board of Governors in Controversy

The Board of Governors had accordingly voted at its May meeting, among other things, "(1) That the reports of Section Committees to their Sections shall not be printed in the Advance Program Pamphlet to go to the general membership, until such reports have been approved by the Section or its Council and until such printing and distribution have been authorized by the Board of Governors, upon considering any recommendation of the Printing Committee.

"(2) That in printing the reports of Section Committees and the proceedings of Section meetings, for distribution to the members of Sections, the same shall be accompanied and preceded by a summary or digest of the contents of the reports, addresses, papers, proceedings, etc., contained in such pamphlet; that the form and extent of such summary digests, and the extent and length of the accompanying material, shall be subject to the approval and revision of the Special Committee on Printing; and that wherever deemed by the Committee on Printing to be practicable and desirable, suitable abstracts, summaries or digests shall be used, wholly or in part, in such Section pamphlets, in lieu of printing in full such reports, addresses, papers and proceedings."

Mr. Morris moved that the grant of power stated in paragraph (2) above quoted be revoked and that the authority granted by that paragraph be as follows: "That in printing the reports of Section Committees and the procedures of Section meetings, for distribution to the members of Sections, the same shall be accompanied and preceded by a summary or digest of the contents of the reports, addresses, papers, proceedings, etc., contained in such pamphlet: that the form and extent of such summary digests, and the extent and length of the accompanying material shall be submitted to the Special Committee on Printing for advice and comment before being printed."

Point of Order Raised, Sustained and Debated

After Mr. Morris had stated his motion, President Hogan asked the House for unanimous consent that he might reserve a point of order "so that we may have free discussion on this interesting and important matter." Mr. Morris objected, and Chairman Gay announced, "Unanimous consent is not granted." President Hogan then said, "I, therefore, make the

point of order that the resolution is not in order, because it is in conflict with the provision of the By-laws of this Association which commit to the Board of Governors the control and government of whatever should be printed by the Association at the Association's expense." (Article IV, Section 1; Article VII; Article VIII, Section 23).

Chairman Gay sustained the point of order made by President Hogan. After referring to various provisions of the Constitution and By-laws of the Association, Chairman Gay said that "it seems implicit in these provisions that the Board of Governors shall have general control and supervision of the printing of Section and Committee reports, possibly because of the relation of expense thus involved to the general income of the Association.

"With the wisdom of these provisions, however, the Chair has no immediate concern, but if a power which is thus conferred upon the Board is unwisely or arbitrarily exercised, as seems to be implied by the pending motion, a remedy is provided through the orderly process of amendment to the Constitution and By-laws, and not by the adoption of a general resolution by the House."

Mr. Morris appealed from the decision of the Chair, and debate concerning that appeal was participated in by Mr. Morris, Mr. Crump and Mr. O'Connell, of Massachusetts, who declared that "There is something of a hidden, mysterious character that President Hogan seems to object to have come out into the open, and I want whatever is here in the open."

A Question of Personal Privilege

President Hogan rose to a question of personal privilege and declared that "The statement made by Mr. O'Connell has no foundation in fact, and is as far unjustified as any statement that one friend could possibly make about aother." President Hogan then proceeded to state briefly the facts of the matter as they were known to him. Secretary Knight and Henry I. Quinn, of the District of Columbia, continued the discussion, after which Mr. Morris made an extended argument in support of his appeal from the decision of the Chair. In the course of his argument he said: "The Committee has done a splendid piece of work. It has made the best analysis of Association costs that it has ever been my privilege to read, and I have been reading them for about fifteen years. It has made some splendid suggestions with respect to the Advance Program by printing the material for action by the House in one pamphlet, and printing in another pamphlet the material which does not call for action. It has done a splendid job in analyzing the costs of printing for the Association generally, and pointing out ways of saving money.

"With all of those objectives, and many more which I might recite at length, I am thoroughly in accord. I compliment the Committee upon that work. . . . The reason I presented the action of this Committee is to determine the question whether or not the Constitution which I have quoted governs this situation, or whether the By-laws which the Chairman of the House has quoted govern the situation. My understanding has been, since we revised the Constitution in Boston, that the House of Delegates was the supreme authority in this Association." (Constitution, Article VI, Section 4).

Chairman Gay Overruled by the House

Mr. Crump, of California, and Murray Seasongood, of Ohio, argued further in support of Mr. Morris' appeal from the decision of the Chair. On a rising vote and count, the ruling of the Chair was overruled by the House. Mr. Morris then spoke further in support of his motion, which without further discussion was adopted by a vote of seventy-two "Yes" and forty "No." A supplementary motion by Mr. Morris as to the Printing Committee was adopted, to the effect "That the Committee shall have such powers and duties as voted to it by the Board of Governors as stated in the Board's report to the House of Delegates dated June 9, 1939, as such report was amended by the action of the House of Delegates on July 12, 1939."

Securities Laws and Regulations

The report of the Committee on Securities Laws and Regulations was presented by its Chairman, former Judge John J. Burns, of Massachusetts, formerly General Counsel of the Securities and Exchange Commission. For the Committee, Judge Burns offered the following resolution which was adopted without opposition:

"WHEREAS, The Special Committee on Securities Laws and Regulations of the American Bar Association has filed its report stating that there exists a need for certain statutory changes in Federal securities legislation; and

"WHEREAS, Such a report has been approved by the Board of Governors of said Association, now, therefore, be it

"RESOLVED, That the American Bar Association respectfully recommends to the Congress of the United States the creation of a Joint Congressional Committee to be composed of members of the United States Senate and of members of the United States House of Representatives which shall inquire into the need for consolidating and amending existing Federal securities legislation; be it further

"RESOLVED, that a copy of this resolution, together with a copy of the Committee report be forwarded to the President of the Senate and to the Speaker of the House."

George Maurice Morris presented the report of the Committee on Federal Taxation, the recommendations of which had been approved by the Board of Governors at its May meeting. Accordingly Mr. Morris did not ask that the House approve the recommendations of the Committee. The report of the Committee on Privileged Communications, of which Frank J. Wideman, of the District of Columbia, is Chairman, and the report of the Committee on Customs Law, headed by Albert MacC. Barnes, of New York, were received and filed.

Committee on Jurisprudence and Law Reform Submits a New Program

Chairman Walter P. Armstrong, of Tennessee, presented and discussed briefly the recommendations of the Committee on Jurisprudence and Law Reform, which he said had "considered recommendations for improvement in Federal legislation, both procedural and substantive law," and selected those which they thought had a chance for passage, after it had conferred with the Department of Justice and the Senate and House Judiciary Committees.

The first resolution, "That the Association approves in principle the establishment of a system of

public defenders in the Federal Courts" was declared adopted on a close division of the House.

A resolution that "the Association approves in principle an act bringing pistols and revolvers within the scope of the National Firearms Act, thus requiring all weapons to be registered, and imposing a nominal tax on their transfer" was adopted without discussion.

A third resolution that "the Association approves in principle an act permitting the United States to be sued in tort in respect of claims for property damage or personal injuries due to the negligence of government officers and employees in the performance of their duties" was adopted.

A fourth resolution submitted by the Committee, "That the Association approves in principle an act permitting one accused of a crime against the United States to waive indictment by grand jury and to consent to prosecution by information" was adopted.

A fifth resolution, to the effect "That the Association approves in principle an act requiring defenders in criminal cases in the Federal Courts who purpose relying upon the defense of alibi, to give to the prosecution notice of that fact before trial," was declared adopted after a rising vote of the House.

The sixth resolution from the Committee, to the effect "That the Association approves in principle an Act permitting, in criminal trials in the Federal Courts. comment upon the defendant's failure to testify" was opposed by Mr. O'Connell, of Massachusetts, who had submitted a minority report. Former Governor Slaton, of Georgia, agreed with the position taken by Mr. O'Connell. Messrs. Seasongood, of Ohio, Delger Trowbridge, of California, and W. E. Stanley, of Kansas, debated the matter, after which Chairman Armstrong replied in behalf of the committee. The sixth resolution was put to a rising vote and was declared to be adopted.

The seventh resolution from the Committee to the effect "That the Association approves in principle an Act extending the Criminal Appeals Act so as to permit the United States, in criminal cases, to appeal from any order sustaining a demurrer or like pleading," was also opposed by Mr. O'Connell, who had filed a dissenting report in the Committee. The resolution recommended by the Committee was adopted.

Chairman Armstrong then moved resolutions Nos. 8 and 9 as follows: "RESOLVED, That the Association approves in principle an Act providing for a system of voluntary retirement for Federal judges who have become disabled before reaching the present retirement age."

"RESOLVED, That the Association approves in principle an Act prohibiting Federal judges from actively engaging in any other kind of business."

Former Governor Slaton, of Georgia, inquired: "Suppose a Federal judge were the executor of an estate, a member of his family that required the transaction of some business, would that be fair to the Federal judge to say that he shouldn't do that, and is there a possibility of that accomplishing what the gentleman does not intend? Mr. Armstrong replied, "I am delighted to answer that question because it so happens that I discussed that very question which actually arose with one of the judges of the Court of Appeals, of the Second Circuit Court of Appeals, who was in that situation. We think the act should be framed so as not to prevent his acting under those circumstances. The thought we have in mind is to prohibit a Federal judge from engaging in a commercial business, not from handling his own affairs, not from being executor, not from being a trustee."

Gabriel Moulin

THOMAS B. GAY
Presiding in House of Delegates

On the request of Wm. Logan Martin, of Alabama, resolutions No. 8 and No. 9 were voted on separately. Each was adopted.

Further Reports by Committees Are Heard

The report of the Committee on Administrative Law was received and filed, the principal report of that Committee having been made to the mid-winter meeting of the House of Delegates last January.

Sylvester C. Smith, Jr., of New Jersey, Chairman of the Committee on Proposals Affecting the Supreme Court and Other Courts of the United States, presented its report for information and stated that "The emergency for which this Committee was created appears to have passed. The Committee is of the opinion that

its work can be properly carried on by the Standing Committee on Jurisprudence and Law Reform." Chairman Smith accordingly recommended that the Committee be discharged and the motion was carried. Thus passed quietly out of existence the agency of the Association which was on the firing line in the historic struggle of 1937 as to enlarging the Supreme Court of the United States.

The report of the Standing Committee on Labor, Employment and Social Security, of which William L. Ransom, of New York, is Chairman, contained no recommendations for the action of the House, the principal report of that Committee having been reported to the mid-winter meeting.

Bar Association "Rosters" Are Discussed

The report of the Standing Committee on Professional Ethics and Grievances, of which Judge Herschel W. Arant, of Ohio, is Chairman, was received and filed. R. Allan Stephens, of Illinois, arose to ask consideration of the following paragraph of that report:

"Certain Bar Associations have issued rosters of their membership and have therein made departures from ordinary membership rosters by the inclusion of information as to the fields of law in which particular members are expert or experienced. This departure, of course, has as its objective the promotion of the interests of each member, who doubtless hopes that the publication of such information with his name will result in business being forwarded to him. The voluntary Bar Association publishing such a roster, in all probability, hopes that this phase of service will encourage additions to its membership. The Law List Committee has decided that such rosters are not law lists, and this Committee has decided that, because they are not law lists, a lawyer may not properly permit publication of this information with his name, under Canon 27."

Mr. Stephens asked that in view of the facts disclosed by recent surveys of the economic condition of lawyers in many communities, the attitude of the Committee toward Bar rosters prepared for State and local Bar Associations presents a serious question of policy, which might call for an amendment of the Canons of Ethics. He moved that the above quoted paragraph of the Committee's report be not approved by the House of Delegates. On motion of Mr. Smith, of New Jersey, the subject matter of Mr. Stevens' resolution was laid over until a later session at which one or more representatives of the Committee on Professional Ethics and Grievances could be present.

The report of the Committee on Facilities of the Law Library of Congress was presented by Henry P. Dart, of Louisiana, in the absence of the Chairman of the Committee, and the recommendations were adopted. The report of the Committee on Legal Aid was received and filed. The report of the Committee on Economic Condition of the Bar was transmitted to the House with the recommendation of the Board of Governors that consideration of the report be deferred until next year in view of the fact that the report had not been received until July 10 and the members of the Board of Governors had no opportunity to consider it or act upon it. William A. Roberts, of the District of Columbia, Chairman of the Committee, stated the situation and the circumstances of the delay in its report, the committee being one whose abolition had been recommended by the Committee on Survey. On motion of Mr. Smith, of New Jersey, the report was placed on the calendar of the mid-winter meeting of the House.

The report of the Committee on Unauthorized Practice of the Law was received and filed. Judge Van Buren Perry, of South Dakota, gave the report of the Section of Judicial Administration, and made a motion that consideration of the report be deferred until the mid-winter meeting of the House of Delegates.

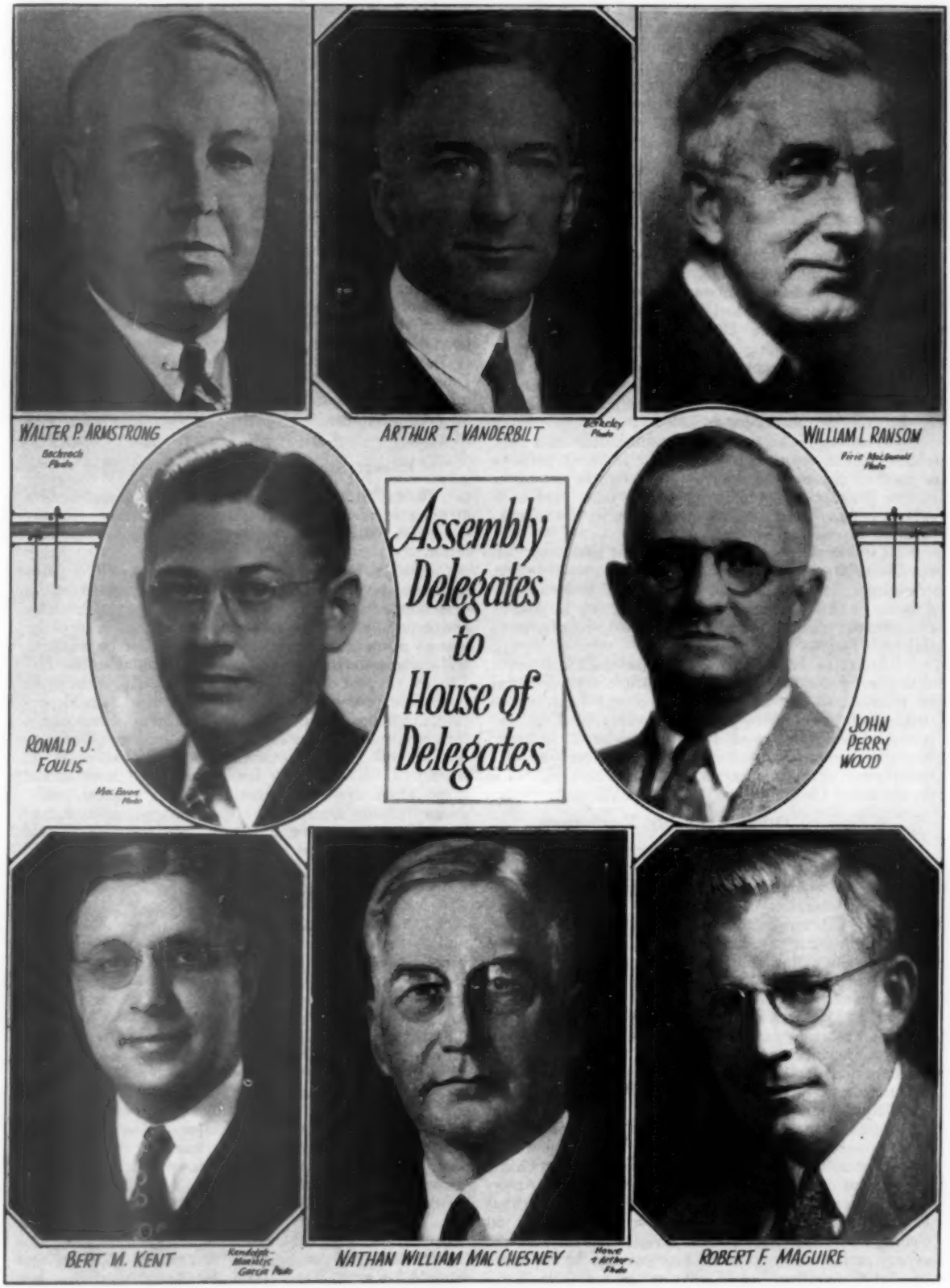
Third Session of House of Delegates Acts on Resolutions Adopted by Assembly—Powers of House as to Opinions of Committee on Professional Ethics Debated — State Bar Association "Rosters" — Fact-Finding in Field of Public Relations — Committee on Commerce Retained

THE THIRD SESSION again showed the capacity and usefulness of the House as a deliberative and smoothly-functioning legislative body. Bicameral action was first taken on resolutions adopted by the Assembly; in one instance, modifying action was taken which required re-submission to the Assembly. A significant step for fact-finding in the field of public relations was approved. In his "farewell to the House," Robert Stone offered a resolution and made a moving plea for support of a business-like administration of the Association within its resources. The powers of the House as to opinions adopted by the Committee on Professional Ethics and Grievances was debated—are such opinions judicial or legislative in character? An early issue as to amendment of the Canons of Ethics was forecast, if the Association is to "police" the commercial law lists and the State Bar Association "rosters" are to enter into competition with them. The matter was deferred until the mid-winter meeting. The House decided to retain the Committee on Commerce, rather than merge it into the Section of Commercial Law. The Committee on Survey was discharged; other Committees and Sections reported.

AT the opening of the third session of the House of Delegates on Thursday afternoon, Chairman Gay announced that he had received a telegram from Chairman O. R. McGuire, of the Committee on Administrative Law, to the effect that the Judiciary Committee of the House of Representatives had reported favorably the Association's Administrative Law Bill, approved by the House last January.

The first order of business was a statement to the House as to the resolutions adopted by the Assembly upon the report of its Resolutions Committee. With respect to the Assembly Resolution which asked

(*Continued on page 664*)



Messrs. Walter P. Armstrong, Arthur T. Vanderbilt, William L. Ransom and Ronald J. Foulis were elected for a two-year term; Messrs. John Perry Wood, Bert M. Kent, Nathan William MacChesney and Robert F. Maguire for a one-year term.

the Association to authorize its Public Relations Committee to make every effort to inform the general public of the dignity and ethical standards of the legal profession and of the consciousness of lawyers of their public obligations, the House approved the action of the Assembly, which had referred the resolution without recommendation to the Committee on Public Relations.

Modifying Action as to Public Defenders

As to the Assembly Resolution relative to the establishment of a system of public defenders in the criminal courts, the House approved the resolution adopted by the Assembly, with the modification that such action should not modify the action of the House of Delegates Wednesday upon the report of the Committee on Jurisprudence and Law Reform (as to public defenders in the Federal Courts), and with the further modification of striking out the alternative reference "or to such special committee as may be set up for the purpose of studying this matter." The resolution as revised by the Resolutions Committee and adopted by the Assembly had been as follows:

"WHEREAS, The proposed establishment of a system to secure competent counsel for indigent persons accused of crime, has engaged the thoughtful attention of the Bar and the public for many years and is a subject of vital interest and importance in the administration of criminal justice;

"THEREFORE, Be It Resolved, That the American Bar Association approve in principle the establishment in each locality of a system, best adapted to local conditions, as will be adequate and effective to assure competent counsel for needy persons accused of crime: and be it

"FURTHER RESOLVED, That consideration of practical plans for carrying out the principle thus declared be referred to the Section on Criminal Law, or to such special committee as may be appointed by the House of Delegates to study and consider the subject, such Section or committee, as may be determined by the House of Delegates, to act in cooperation with the Standing Committee on Legal Aid Work."

Action on Other Assembly Resolutions

The next Assembly Resolution expressed the thought that many positions in Government service now occupied by laymen might in the public interest be better filled by lawyers, and called for the appointment of a Committee to make such positions available to lawyers, to the end, among other things, of reducing economic hardship among lawyers. The Assembly action had called on the Committee on the Economic Condition of the Bar to give study to this subject. On motion of Mr. Smith, of New Jersey, the House approved the action of the Assembly on this resolution.

The next resolution adopted by the Assembly, in form revised and recommended by the Resolutions Committee, had been as follows:

"RESOLVED: That the President of the American Bar Association is hereby authorized to appoint a member or members of this Association to represent this Association on the Nation-wide Committee on Crime Prevention composed of representatives of The American Legion, the National Association of Attorneys General, The Interstate Commerce Commission on Crime, and other Nation-wide civic organizations; the representatives so appointed to cooperate in the work of that Committee, but to have no power to bind the American Bar Association in any respect without its express consent."

On motion of Henry S. Ballard, of Ohio, the Assembly resolution was approved and adopted by the House.

Fact-Finding as to Public Relations Projected

Chairman Philip J. Wickser, of New York, discussed interestingly the report of the Committee on Public Relations and moved "that, pursuant to Section 1 of Article X of the By-laws, the Special Committee on Public Relations shall consist of the following seven members: The President of the Association, the Chairman of the House of Delegates, the Editor-in-chief of the AMERICAN BAR ASSOCIATION JOURNAL or a member of its Board of Editors designated by him, the following persons appointed by the President: A member of the Budget Committee of the Board of Governors, a Chairman, and two other members of the Association who shall, as far as practicable, be chosen from members of the Council of the Section of Bar Association Activities and the Council of the Junior Bar Conference, respectively."

He stated that the Committee was not asking for an appropriation. The motion of the Committee was adopted.

Robert Stone Makes an Earnest Plea

Robert Stone, of Kansas, in his "valedictory" as a member of the House, asked and obtained unanimous consent to introduce and speak to the following resolution:

"BE IT RESOLVED, That the House of Delegates endorses the action of the Board of Governors in its determination to balance the budget of the Association, and especially for its earnest endeavor to reduce the cost of printing and publishing of its books, pamphlets, and documents through its Committee on Printing."

In support of his resolution Mr. Stone said, in part, "I deprecate, and I am sure all of us here deprecate, anything which might cause disagreement between this House and its servants. The Board of Governors has several very serious problems thrown upon its shoulders. I may speak freely, because I have served three years upon that Board. I am retiring today. I am retiring from this House today. I have had no other opportunity to speak, but someone should tell you and remind you of the serious burden laid upon the Board of Governors to manage the affairs, especially the financial affairs of this Association, so that we may not have a deficit.

"We have an almost impossible problem to solve, and that is to make the expenses come within the income. Your Budget Committee, acting under the Board, strives very hard to solve that problem: and yet there is an almost insupportable pressure brought to bear upon the Budget Committee and upon the Board from all of the Committees of the Association, from every Section of the Association, to yield to expenses which will become exorbitant unless they are held down.

"To that end, this Committee on Printing and Publications was appointed and has made, as Mr. Morris said the other day, one of the finest reports that was ever brought to this Association, and it discloses the astounding situation of $110,000, the average expense of the last three years, for printing.

"Now everybody wants what he says printed, and many of the things that are said here and by the Committees and in the Sections are worth printing, and should be printed, but there is a great deal that can be left out without crippling the work of the Association. That is the problem that this Committee on

Printing has so splendidly brought to your attention in the pamphlet which is on your desk, and if you will turn to that pamphlet you will find there that it shows the astounding expense of printing. That printing largely comes from the pressure to print the excellent addresses and the excellent reports, the magnificent reports, that are brought in by the Committees and by the Sections, but it must be held down or we would go in the red, and somebody must keep his fingers on the purse strings and hold them. . ."

"That is all there is to it, gentlemen; that is all there is to it. The Board of Governors is your servant. It is not trying to dictate to you, and any intimation that came to this House that the Board of Governors or the officers of the Association were trying to force their will upon this body or were trying to secrete from this body anything was really without any justification."

Mr. Stone's remarks were heartily applauded, and he was greeted by many members as he left the rostrum. His resolution was adopted.

Status of Opinions as to Professional Ethics

In the absence of Chairman Arant of the Committee on Professional Ethics and Grievances, Judge Orie L. Phillips, of New Mexico, a member of the Committee, addressed the House with respect to the motion offered by Mr. Stephens, of Illinois, which he said would "amount to a repudiation of a decision on the question of professional ethics rendered by your Committee on Professional Ethics and Grievances." He stated that "These rosters that have come before our Committee for consideration amount to competition by the organized Bar with the law lists, and the issue of policy is whether or not, on the one hand, we shall engage in policing these commercial enterprises and, on the other hand, engage in competition with their activities."

Judge Phillips referred to the illness of the incoming Chairman of the Committee on Law Lists, as well as the absence of the Chairman of the Committee on Professional Ethics and Grievances. "I don't think a question of this importance," said he, "should be passed upon without a full and complete and adequate hearing." He therefore moved, as a substitute for Mr. Stephens' pending motion, that this matter be made a special order of business at a fixed time at the mid-winter meeting of the House.

Mr. John Kirkland Clark, of New York, moved to amend Judge Phillips' motion by providing that the operation of the decision on the Committee of Professional Ethics and Grievances, as to bar rosters, should be suspended pending the mid-winter meeting. Mr. Stephens was granted an extension of time for further argument in support of his motion, and Judge Phillips pointed out in reply that the Committee had not asked to have its report approved or disproved by the House. The following then took place:

"MR. STEPHENS: I should like to ask Judge Phillips of what standing, then, does he consider rulings made by the Legal Ethics Committee which are published in the Bar JOURNAL as the official statement of the Bar Association on matters of ethics?

"MR. PHILLIPS: I think they are final. I think the action of the Committee on a question of ethics is a decision of that Committee and is final. The only way it can be changed is by amending the Canons of Ethics. I do not think the House of Delegates can overrule a decision of the Committee on Ethics. The facts are not before this House. You have not stated what you propose to publish in your list. This report does not show what should be on the list. For example, it does not disclose that you are going to have associate members all over the United States."

A Point of Order Made, Sustained and Withdrawn

Henry I. Quinn, of the District of Columbia, raised the point of order that the House had no right to suspend an opinion of the Committee on Professional Ethics and Grievances. Construing Article X, Section 15, paragraph (c) of the By-laws, Chairman Gay sustained the point of order, on the ground that "this By-law seems to repose in this Committee the power solely to express its opinion. Whether the House may disagree with it or not, obviously does not change the opinion of the Committee."

Mr. Stephens appealed from the decision of Chairman Gay and argued in support of his appeal. In reply, Judge Phillips stated that "the question of whether or not you can set aside an opinion of this committee is now before the House and I am compelled to speak on it.

"The action of this Committee is judicial in characted. It sits in the nature of a court to construe the meaning of the Canon of Ethics of this Association as applied to particular hypothetical cases or specific cases that are presented to it for opinion. It renders its opinion and it is just the advisory opinion of the Committee. In our report we do report that we have rendered an opinion on such and such a subject. We do not ask this House to say that that opinion is right. We do not think it can by implication, by deleting from the report, say that it is wrong. We think that is a matter vested intentionally in this Committee as a discretionary matter, as a matter of judicial construction, judicial in nature, not legislative in character. We think that the By-laws were drawn that way advisedly; in fact, I think I know they were.

"I do not think that this House can set aside our opinion. It can amend the Canons by proper procedure. It perhaps could express its opinion that it was in disagreement with it, and after it had heard the matter fully on the merits, if it was in disagreement, I think we would be glad to have it so express itself, but to suspend or overrule or set aside one of the opinions of this Committee in my judgment is beyond the function or the power and jurisdiction of this House."

Mr. Delger Trowbridge, of California, and John Kirkland Clark, of New York, supported the appeal from the ruling of Chairman Gay. Walter S. Fenton, of Vermont, inquired of Mr. Stephens "whether it is his view that every opinion rendered by the Committee on Professional Ethics and Grievances must be submitted to this House and be approved before it can become operative.

"CHAIRMAN GAY: Does Mr. Stephens care to answer the question?

"MR. STEPHENS: Sure, I will answer any question. The question which was asked of me here I do not think comes in this at all. I do not have to answer it now."

In the interests of a decision on the merits, Mr. Quinn withdrew his point of order; and the substitute motion as amended was adopted by the House on a rising vote.

Abolition of Committee on Commerce Is Opposed

Next in order was the report of the Committee on Survey of Work of Sections and Committees, which was made by former President Frederick H. Stinchfield of Minnesota. As the first item a Section of Taxation was created and the Standing Committee on

Federal Taxation was abolished, through the adoption of an appropriate amendment to the By-laws.

The recommendation of the Survey Committee to discontinue the Standing Committee on Commerce was opposed by Sylvester C. Smith, Jr., of New Jersey, and Harold J. Gallagher, of New York. Judge Ransom of New York said:

"I am interested in this question not only because I think the Committee should be continued because of the specific subject, but because it presents what to me is about the most serious administrative problem we have in the House of Delegates, if it is to be assumed that the Association and the House will continue to function under anything like the present framework of government.

"Let's take this picture as an illustration. The experience of the Association, I think we will all agree over a period of time, for many years, has been that our Sections function splendidly for the development of reports, for the discussion of many questions in forums that cannot be provided on the general platform, and for the formulation of a consensus of view upon many questions in the fields of law assigned to them. That is where the Sections work well.

"When you come to handling a matter of legislation like those in this field of commerce, I submit that we have utterly failed in any way to solve the question of machinery whereby a Section is at all suited to deal with fast-moving questions of legislation in behalf of this Association. Almost necessarily that is best done by a small committee which can afford to meet, come to Washington, if need be, frequently, or meet from time to time during the year. Most of all, a small committee can operate directly, responsibly, to this House and to the Board of Governors under the supervision of the President.

"What is the situation when we put this and that into these Sections? I am not saying this in criticism of Sections generally or particular Sections, but, for example, at the present time in our Annual Report Volume alone it costs this Association, out of its slender resources, more than a thousand dollars a year merely to print the list of the members of the Section Committees.

The Functioning of Sections in the Association Structure

"What takes place with respect to these Sections, and what is the question that we have got to answer about integrating them into the structure and the functioning of this Association? We had a motion last year to create a Section of Commercial Law. We all know what commercial law is. We had a report from a committee, of which a member was Mr. Stinchfield, and he stated then, as has been read to you, with very great clearness and accuracy, the reasons why the functions of the Committee in this specialized field of legislation as to commerce ought not to be merged into the field with Commercial Law. Now, having created the Section upon that representation—and I for one certainly would have opposed the creation of such a Section violently had there been any idea of doing away with this useful Commerce Committee and putting it in the hands of the Commercial Law Section—it is recommended by a Committee headed by Mr. Stinchfield that the basis on which the Section of Commercial Law came into being at all should be disregarded and this useful Committee put into the Section.

"We have this queer reasoning which I can't help but point out, because while it isn't the particular instance here: We have a Committee on Securities Laws and Regulations, and only yesterday this House adopted the recommendations of that very expert Committee in that specialized field. There is nothing in the By-laws of the Section of Commercial law which says that it has any jurisdiction over Securities Laws and Regulations; yet once having come into existence and with this problem of just how to fit these Sections in still unsolved in our Constitution and By-laws, it was seriously suggested in the Assembly this morning, in behalf of those who sought to discontinue a very useful and expert Committee of the Association, that since the Section on Commercial Law had come into being and since that Section in its own autonomy had put on its program a discussion of matters as to Securities Laws and Exchanges, this Association ought to abolish its special and expert committee in the field and put that subject into the Section.

"I mention these things because of a profound belief that there is an unsolved problem which we have to face if we are going to be able to deal effectively with legislative matters that are important to the profession and the public, and I profoundly hope—

"MR. QUINN (District of Columbia): Isn't it true, Mr. Ransom, that the Assembly this morning, on the last Committee you referred to, refused to abolish that Committee?

"MR. RANSOM: The Assembly refused to abolish that committee, but I think that certainly at this time, until we get some better, fairer ground, we better not—until we have some procedure under which a Section with its wholly uncontrolled basis of appointing committees—neither the House nor the Board nor the President of the Association nor anybody determines what committees these Sections have or how large they are or who is on them—so far as legislative matters in a field like this are concerned—I think until we get some better answer to the problem, we had better keep our specialized committees."

Committee on Commerce Is Retained

Mr. Stanley, of Kansas, opposed the motion to discontinue the Committee on Commerce on the ground that the report of a Section Committee could not deal as effectively with the subject, inasmuch as the action of a Section or its Council would be necessary before the report of a Section Committee could become the action of the Section. Mr. Mason, of Maryland, expressed the hope that the House would not abolish the Committee on Commerce, "whose functions," he said, "are entirely different from the Section on Commercial Law."

Mr. Beardsley, of California, made the point that the Association does not save money by transferring a function from a Committee of the Association to a Committee of the Section.

The discontinuance of the Committee on Commerce was put to a vote, and the motion was defeated and the Committee retained.

Committee on Survey Completes Its Work

The recommendation of the Survey Committee that the Committee on Noteworthy Changes in Statute Law be abolished was moved by Mr. Beardsley, and the By-laws were amended accordingly.

Mr. Stinchfield of the Committee moved that there be abolished the Committee on Amendments and Legislation Relating to Child Labor. The motion was carried.

A similar motion by the Survey Committee that

(*Continued on Page 711*)

THE CONSTITUTION AND THE WILL OF THE PEOPLE

Most of Our Constitutional Changes Have Come about through Judicial Construction, and Changes in the Public Mind, if They Are Profound and Lasting, Will Always Be Reflected in Constitutional Decision, as in the Jacksonian Era—It Will Generally Be Found That the Obstacle to a Considered and Persistent Legislative Policy Is not in the Great Clauses of the Constitution but only in the Minds of Some of Its Interpreters—Process of Adaptation Has Been the Life of That Instrument—Prevailing Sentiment and Exercise of Appointive Power —No Ground for Constitutional Pessimism Today, etc.*

By Hon. James F. Byrnes
United States Senator from South Carolina

On the occasion of the one hundred and fiftieth anniversary of the Congress of the United States, Chief Justice Hughes, in discussing constitutional government, declared, "And what the people really want they generally get."

He declared this to be true because the people had in their hands "the ultimate power of change through amendment." It is not clear whether the Chief Justice meant amendment only in the manner specifically prescribed by the Constitution, or whether he included the power to amend by custom and by judicial interpretation, methods which are not prescribed by the Constitution but have been accepted by the people.

It is true, however, that in one or another of these ways the Constitution has been amended to respond to the needs of the people, and this flexibility, this response to changed conditions is its strength and not its weakness. The Framers of the Constitution anticipated that changed conditions would demand revision and that any fundamental law must be a law of the living and not of the dead. Jefferson shared this view and in 1816 in one of his oft-quoted letters, wrote:

"Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. . . . I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with. . . . But I also know that laws and institutions must go hand in hand with the progress of the human mind. . . . As new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors—Each generation . . . has a right to choose for itself the form of government it believes the most promotive of its own happiness. . . . A solemn opportunity of doing this every 19 or 20 years should be provided by the constitution."

The people did not follow the advice of Jefferson as to constitutional revision every twenty years. And since the adoption of the Bill of Rights in 1791, only eleven amendments have been ratified despite the transformation of the Nation from a strictly agricultural to an agricultural and industrial economy. That does not mean that it has remained unchanged. For every time that the Constitution has been amended, it has been changed ten times by custom or by judicial construction.

One argument advanced against amendment by the method prescribed by the Constitution has been the delay of the States in considering such amendments. That is evidence of the impatience of our people. This year we have received additional proof of the willingness of the states to act upon Constitutional amendments if given time for consideration, the Secretary of the Senate within the last six months, having received formal certification of the ratification of the Bill of Rights by the States of Georgia, Connecticut and Massachusetts,—only 140 years after the submission of those amendments to the states.

Perhaps the most drastic change ever made in our entire system of government was that which transformed the electoral college from a body of sagacious statesmen chosen for the purpose of selecting a President, to a body where wisdom is a superfluous charm, and trustworthiness is sufficient. That change goes to the very foundations of our plan of representative government. Certainly it was as great a departure from the plan of the Framers as the change in our method of selecting Senators, from election by the legislature to election by the people. And yet the one was accomplished by political development, acquiesced in as established custom, while the other required a revision of the text of the Constitution.

It so happens that the party system, and popular election of the President, corresponded at an early stage with the people's conception of Democratic government. This being so, there was no demand for a formal constitutional amendment, and we do not hear the change denounced as revolutionary or un-American.

Most of our constitutional changes, however, have come about through judicial construction. Some of these "amendments" have been in the nature of clarifying amendments, making specific what had been left general and vague. Others have been changes of sub-

*Address delivered at the session of the Assembly of the American Bar Association, on Wednesday evening, July 12, 1939.

stance and an interesting thing is that these are changes in the Court's own decisions, and like railroad schedules, are subject to further change without notice. It is natural for the lawyer to look with disfavor on shifts in constitutional doctrine. Employed to render an opinion as to the constitutionality of legislation, he naturally dislikes to think that the opinion he gives to his client, based on the latest decision of the Court, may on the next opinion day be branded as a mistaken interpretation of the Constitution. At an early period the lawyers resented the necessity of looking to Daniel Webster instead of to Noah Webster for a definition of the simple words of the Constitution. But at a later period they were content after the decision in the Minnesota Rate case to look for definitions in Standard Statistics instead of the Standard Dictionary.

But if as lawyers we put aside our special interests, and view the process dispassionately, we are compelled to recognize that in the law, as well as elsewhere, the surest sign of life is change, or at least a readiness to change. This has been the philosophy expressed by some of the most distinguished judges who have sat on our Supreme Court. Chief Justice Taney declared that he was "quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should thereafter depend altogether on the force of the reasoning by which it is supported."[1] Justice Field, who was never accused, so far as I am aware, of being a dangerous radical, expressed the same idea. He said: "It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doctrines only will eventually stand which bear the strictest examination and the test of experience."[2] More recently this conception of progress in constitutional law was explained by Justice Brandeis in these words: "The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."[3]

I am not suggesting that change in constitutional doctrine is desirable for its own sake. Neither am I advocating changes which are capricious or lacking in reason. But I think the danger of such changes is illusory so long as the courts adhere to the practice of rendering full opinions to justify their decisions, and also expose themselves to the critical barrage of dissenting opinions. This practice gives assurance that changes in our constitutional law are founded on an appeal, as Justice Brandeis put it, to the lessons of experience and the force of better reasoning.

The real danger to our constitutional system has not been the readiness of courts to amend their decisions. The real danger has been the tendency of courts to disregard the lessons of experience and the force of better reasoning, and thus to produce hardening of the constitutional arteries. That disease might be fatal to the body politic.

In applying the Constitution, the courts can delay but can not permanently prevent the adoption of a policy persistently demanded by a majority of the people and by their representatives. Whenever the courts nullify the adoption of a Congressional policy there will be a re-examination of that policy by the people and the Congress. If the issue is one of little importance, or if on sober second thought it appears to have been ill conceived, there will be acquiescence in the decision. But if the policy in question represents a solemn conviction of a majority of the people, and if the decision has failed to persuade honest minds that the policy is clearly forbidden by the Constitution, then there is bound to be agitation for a re-consideration of the decision. In these circumstances what the people really want they will generally get. In rare instances it may be necessary to resort to a constitutional amendment, as was done after the Income Tax decision. More often a new decision of the court supplants the old as in the Washington State Minimum Wage Law case.

This process of adaptation has been the life of the Constitution, but it has never failed to call forth a body of mourners ready to pronounce the obsequies over what they regard as the Constitution's mortal remains. A century ago Justice Story, toward the end of his long career on the Bench, lamented the death of the Constitution. "I am the last of the old race of Judges," he said. "I stand their solitary representative with a pained heart and a subdued confidence." "I have long been convinced that the doctrines and opinions of the 'Old Court' were daily losing ground, and especially those on great constitutional questions. New men and new opinions have succeeded. The doctrines of the Constitution, so vital to the country, which in former times received the support of the whole Court, no longer maintain their ascendancy."[4] Daniel Webster took the same mournful view. In one of his letters he wrote: "Judge Story arrived last evening in good health, but bad spirits. He thinks the Supreme Court is gone and I think so too; but almost everything is gone or seems rapidly going."[5]

What called forth these funereal and woeful chants? The country was passing from the period of Whig domination to the period of Jacksonian Democracy. The decisions and personnel of the Court were reflecting the change, and lawyers of the old school were ready to give up the ghost. The new Court, under Taney, proceeded to develop those principles of the police power of the states that today are acknowledged to be at the foundation of effective government. The fears of the old school were more partisan than the decisions of the new. The Court was making new constitutional doctrine, to be sure, but it was doctrine called for by new conditions and responsive to the needs of the people. As corporations grew and multiplied, they challenged the power of the state, their creator, to control them. They claimed monopolistic privileges that would have made them the rulers of the state. The Court found the Constitution adequate to protect the people. The doctrine of the reserved power of the states over corporations was evolved, and the people got what they wanted.

It was certainly not what the lawyers of the old school wanted. The *Charles River Bridge case*, which has become a venerable landmark in our constitutional history, was received with abuse by the old guard members of the legal fraternity of 1837. The rights of property were gone, the Court was gone, the Constitution was gone. There was great fear that lawyers would never again enjoy the pleasure of seeing legis-

1. *The Passenger cases*, 7 How. 283, 470.
2. *Barden v. Northern Pac. Ry. Co.*, 154 U. S. 288, 322.
3. *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 407-408 (dissent).
4. Warren, *Supreme Court in U. S. History* (1937 ed.) Vol. II, 139, 140.
5. *Id.*, p. 10.

Senator Byrnes (right) and President Hogan at Banquet

Gabriel Moulin

lation declared unconstitutional. "There will not, I fear," said Story, "ever in our day, be any case in which a law of a State or of Congress will be declared unconstitutional; for the old constitutional doctrines are fast fading away, and a change has come over the public mind from which I augur little good."[6]

Changes in the public mind, if they are profound and lasting, will always be reflected in constitutional decision, as they were during the Jacksonian era. Sometimes the process is slow, but it cannot be delayed indefinitely. The "lessons of experience" will be learned, and it will generally be found that the obstacle to a considered and persistent legislative policy is not to be found in the great clauses of the Constitution, but only in the minds of some of its interpreters.

The prevailing sentiment is bound to be reflected in the exercise of the appointing power. I do not mean that judges are, or should be, chosen because of their views on particular issues. What I do mean is that the general attitude of a man toward government and toward the judicial function necessarily is taken into account. Certainly it has been taken into account in the past. When President Lincoln was faced with the appointment of a Chief Justice, he frankly acknowledged that "we wish for a Chief Justice who will sustain what has been done in regard to emancipatior and the legal tenders. We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it. Therefore, we must take a man whose opinions are known."[7] President Theodore Roosevelt was even more explicit. In ex-

6. Warren II, 28.

7. Warren II, 401.

plaining to Senator Lodge his views on appointing Justice Holmes, he said:

"Now I should like to know that Judge Holmes was in entire sympathy with our views, that is with your views and mine . . . before I would feel justified in appointing him."[8]

I am not citing these Presidential views as models for the exercise of the appointing power. It may seriously be questioned whether they did not reveal an undue attention to the supposed opinions of the candidates on specific political issues rather than their general attitude towards representative government. But at least they show an awareness that judges are human, and that the selection of judges will in all probability affect the course of constitutional law one way or the other.

Let us not set up a double standard in this matter of choosing judges. A lawyer whose experience has been primarily on the side of defending governmental measures will be as much or as little affected by his experience as the lawyer who has primarily been engaged in resisting governmental measures. After serving 13 years on the Supreme Court, Justice Miller ob-observed that

"It is vain to contend with judges who have been at the bar the advocates for forty years of railroad companies, and all the forms of associated capital, when they are called upon to decide cases where such interests are in contest. All their training, all their feelings are from the start in favor of those who need no such influence."[9]

With equal force it could be said that it is vain to contend with a judge who, while at the bar, has devoted his time exclusively to the representation of persons suing railroad companies and other forms of associated capital, where such interests are in contest. When a man dons the judicial robe he cannot as quickly divest himself of the views and prejudices arising out of years of devotion to special interests.

A great deal has been said and written about the judicial temperament. We can all agree that the attitude of mind described by Justice Miller is not the judicial temperament. I think we can also agree that in applying the Constitution one element of the judicial temperament is respect for the views of the legislature, a coordinate branch of government. Times without number the courts have declared that they will not substitute their judgment for that of Congress in matters of policy, and that every presumption is in favor of the validity of an Act of Congress. I venture to think that henceforth this rule will be honored more in the observance than in the breach.

I venture to think, also, that henceforth the courts will exercise a healthy skepticism in hearing arguments that Congressional legislation has usurped the powers of the states. I say this because the charge of usurpation by Congress is generally not made by the States. It is made by special interests which are more concerned with escaping all control than preserving the control of the States. We have had many recent examples of this—the attack on the voluntary bankruptcy law for municipalities, the attack on P. W. A. loans to states and cities, the attack on the social security legislation. All of these represented co-operative efforts by the Federal Government and the states to solve their common problems. Nevertheless they were assailed in the courts in the name of state sovereignty, while the states did what they could to disavow their new-found protectors.

Some men doubt the wisdom of the court in solving doubts in favor of the action of Congress. They believe it unwise because they really do not believe in Government by the People. They doubt that the people know what they want and are convinced they should not have what they want. They are really opposed to representative government and devote much of their time to ridiculing the Representatives of the people in Congress. The genius of the American people, however, has not found a better way to voice their will than by the election of representatives. The representative may not be the most brilliant man in the District. The chances are, however, that when he receives a majority of the votes in his district he is truly representative of the convictions, virtues and weaknesses of a majority of the voters in that district. Legislators may make mistakes, but miscarriages of justice are probably less frequent in legislation than in the decisions of Judges and Juries. In any event, from legislation there is always an appeal,—an appeal to the people.

The Supreme Court itself has declared, through Justice Holmes: "It must be remembered that legislators are the ultimate guardians of the liberties and welfare of the people in quite as great a degree as the Courts."[10] It is the common charge of some lawyers that the Congress gives no consideration to the constitutionality of legislation. This charge was often heard three years ago. In justification of it, there were cited the several cases in which the Court had decided against the Congress. It should be remembered, however, that in most of those cases the Court divided five to four, and if by only one vote the action of the Congress was held to be unconstitutional, it is evidence of such a divided opinion as to justify the Congress in the enactment of the law and the submission to the Courts of the question of Congressional authority. Even in the N. R. A. case, where the decision was unanimous, the Circuit Court of Appeals in New York rendered its opinion in substantial accord with the views of the Congress.

History discloses numerous precedents of submission to courts of legislation as to the constitutionality of which doubt was expressed. The first President, George Washington, received from his Attorney General an opinion that a certain Congressional enactment was unconstitutional. Sharing the opinion of the Congress instead of the Attorney General, he approved the bill leaving to the courts the determination of the constitutional issue. From that day to this, Congress and Presidents have followed the policy of the Father of the Country.

The greater latitude given to the Congress by the action of the Court in adopting the liberal attitude of the school of Justice Holmes in solving doubts in favor of the constitutionality of legislation undoubtedly places upon the Congress greater responsibility to weigh more carefully the measures submitted for its consideration. Shifting political winds at various times gives added power to one of the three branches of our Government. Today the power of the Legislative Branch is in the ascendency. How long it will exercise that increased power depends upon how wisely it is used. The added power not only places greater responsibility upon the Congress but places greater responsibility

8. *Selections from the Correspondence of Theodore Roosevelt and Henry Cabot Lodge.* I (New York, 1925), 517-19.

9. Quoted in Fairman, "Justice Samuel F. Miller," Political Science *Quarterly*, Vol. 50, p. 43.

10. Missouri, Kansas & Texas R. Co. v. May, 194, U. S. 267, 270.

upon you as citizens to take a more active interest in the selection of those who are clothed with the law-making powers.

Do not be misled by political oratory. Congress in enacting the Agricultural Adjustment Administration Act, the Labor Relations Act, the Social Security Act, and other measures recently sustained by the Courts, gave expression to the national will. These Acts may, in fact do, require amendment. They may require change in the method of administration and change in administrators, but they voice the national will and no political party will today advocate their repeal.

These decisions have been the subject of much discussion. Some who three years ago deplored criticism of the Court are now freely denouncing the Court. Others who were then bitter in their criticism of the Court for obstructing the will of the Congress and the President, now fear that criticism of the Court will endanger the safety of the Republic. You and I are led to conclude that these persons are interested in the effect the decisions will have upon the political and economic interests involved, and not in the effect the decisions will have upon our form of government.

But while those actuated by self-interest or by political partisanship, may view with alarm or point with pride, the vast majority of the people are not disturbed. They know that these changes in Constitutional law affect only economic interests and social reforms; that there is no change in the constitutional guarantee of their civil rights, their liberties, freedom of speech, and freedom of worship.

There will always be social changes. The problems of the next generation will differ from those of today, as our problems differ from those of the previous generation. The law and the Constitution of this day will be no more applicable to the problems of the next generation than the Constitution and the laws of the preceding generation are applicable to the problems confronting us. It follows that no people should attempt to make a perpetual Constitution or even a perpetual law.

There is no reason for any man to fear the future of America unless he fears the people. Fearing the people is nothing new in this country. One of the major struggles of the constitutional convention was between the clashing views as to whether the people could be trusted. There were those who insisted that the people could not be trusted; that government should be several steps removed from the people. It was this school of thought that caused the provision for election of the President by an electoral college, the election of United States Senators by the Legislatures, and the appointment and confirmation of Judges by the President and Senators thus selected. It was this same distrust of the people that caused the placing of restrictions upon the right of suffrage in many states. But there was another school of thought that had greater confidence in the people and, thanks to Madison and his associates, there was designed a governmental structure that was truly representative and through the years has become more and more responsive to the will of the people.

There can be no justification for pessimism regarding the future of constitutional government in these United States unless it is based on the theory that the Constitution should be the weapon and the court the agency by which the will of the people must be defeated.

In a century and a half the American people have proved their devotion to the Constitution—not because it has at times been a means of temporarily obstructing their will but because its provisions are couched in broad and general terms and are flexible enough to respond to the demands and needs of modern society.

And to the Constitutional pessimists of 1939, chanting again the fears of Story and Webster regarding judicial interpretations of the Constitution, may I suggest that they look abroad. In the totalitarian state the people look for protection not to a Constitution but only to the will of an individual. In this country we rest secure in the knowledge that the form of our government can be changed and our rights lost or impaired only by a change in the will of a majority of the people.

Today democracy is being challenged the world over. The dictators rant as they challenge our theory that government by the people is a success. No one denies that the totalitarian government can in certain ways function more efficiently than a democracy, but long since the American people decided the sacrifice of personal liberty is too great a price to pay for any governmental efficiency that might result from one man rule.

As we see the lives and liberties of people destroyed, property rights abolished, and courts debauched; as we see government the oppressor instead of the protector of the weak, we Americans can forget our political differences, give thanks to Almighty God for the Constitution of the United States, and pray that it will ever be preserved by the American people.

DAMON E. HALL

President, Bar Association of the City of Boston, which received honorable mention from Committee on Award of Merit at Third Session of Assembly.

BANQUET ADDRESSES ARE OUTSTANDING FEATURE OF MEETING

"Ambassador of Good Will" Maitland of the Canadian Bar Association Mingles Humor and Wisdom as He Speaks of Our Priceless Heritage of Law—Commander of the American Legion Stephen F. Chadwick Warns of Philosophies Incompatible with the Spirit of Freedom, in Words of Moving Eloquence—W. F. Lilleston of the Kansas Bar Wins New Laurels as a Humorous Speaker Who Says a Great Deal More Than Is Apparent to the Merely Casual and Amused Hearer—President Hogan's Light Touch Adds to Success of Occasion

THE Annual Dinner furnished a model for all such affairs and was one of the high spots of the meeting. The addresses were of exactly the length and character required by the occasion. Humor and seriousness were intermingled in just the right proportions. And through all the proceedings ran the gay obbligato of President Hogan, whose introductions and occasional comments kept everybody in the right mood for enjoyment.

The Canadian Bar could certainly never wish a better representative than Mr. R. L. Maitland, who found himself very much at home in the gathering and whose humorous sallies and serious message were alike appreciated by his hearers. Commander Chadwick of the American Legion found himself in his own house, as he is a practicing lawyer and member of the American Bar Association himself; and the powerful emphasis of certain dangerous tendencies of the day met with ready response from those present. Mr. Lilleston of Kansas made an address which kept the group in a chuckle from beginning to end and showed conclusively that so long as he is one of its citizens Kansas can never be a "dry" state. Following are the addresses in the order of the speakers named.

MR. R. L. MAITLAND'S ADDRESS

MR. PRESIDENT, LADIES AND GENTLEMEN: I now appear in my many nationalities. I need hardly tell you that I appreciate, as much as any human being can appreciate, the very great honor that it is to represent Canada or the Canadian Bar at a meeting of the American Bar Association. I only know of one thing that could add glory to the meeting of the American Bar Association, and that is the holding of your meeting in dear old San Francisco Town. (Applause)

You know, you can go to two kinds of places. In some places they are glad to see you; in others, they are afraid you are going to stay. (Laughter) They are always glad to see you in San Francisco. (Applause)

I must hasten to thank you, and thank you on behalf of Mrs. Maitland and myself for the very great hospitality you have shown us during our stay here. To Mr. Hogan, your President, and his charming wife, to the San Francisco committee which was kind enough to meet us, and to the very old gentleman who has been referred to tonight, the President of the San Francisco Bar, I offer our thanks.

San Francisco, just the same, I notice in looking at the newspapers lately, is still troubled with "Bridges" here. (Laughter and applause)

Now, Mr. Chairman, there is one thing that you and I have in common about my speech tonight. We will both be glad when it is over. (Laughter)

In the first flush of excitement, when I received the invitation to speak here tonight, I called in four of my closest friends and asked them what subject I should speak upon. That was a mistake, because I never was able to make five speeches at once. They all had one original idea, however, and they said, "Be sure to speak about the international boundary line, three thousand miles from the Atlantic to the Pacific." (Laughter) But I want to say this about that boundary line tonight, that the visit of our king and queen to the United States the other day has shown once more that it is the friendliest international line in the world. (Applause)

Now, as I said a moment ago, it is hard to know what to talk about. About every second person I have met in San Francisco has put one question to me, "What do you think of our New Deal?" (Laughter and applause) Of course, the answer is, "Thank God, I don't have to." (Laughter and applause)

You know, I did hear a story about two old prospectors who went to the Yukon, and they became engaged in what you call an unconstitutional game of poker. That is the kind of a game of poker where the deficits are very high. (Laughter) Finally, one of them nudged the other in the ribs and said, "Bill, did you see what he done?"

Bill said, "No. What did he do,"

"He put an ace on the bottom of the pack."

Bill said, "Hell, it is his deal, ain't it?" (Laughter and applause)

I don't want you to think that I am talking about any of your local problems in the states. (Laughter)

It is very hard, indeed, for me to say anything to you tonight that hasn't been said, and said much better than I can say it, to this body, that I consider the most influential body in the United States of America.

I met my old friend, Speed Smith, the other day

in Seattle. Speed Smith and I both do a little bit of work for insurance companies, counsel work in automobile cases. I might explain, for the benefit of the ladies, that that is the last remnant of counsel work that is left to the Bar generally north of the line. (Laughter) I said, "Speed, don't you get sick and tired of these automobile collision cases, the same old case day after day, and day after day?"

Speed said, "You know, Pat, I do. It gets terribly monotonous, the same case day after day, and very often the same witnesses. (Laughter) I get tired of them."

So I find it difficult to bring you something new tonight. Had I the good nature of a Ransom, the clear, incisive mind of a Stinchfield, the debonair of a Vanderbilt, or the aggressiveness of a Hogan, I could make a speech tonight that would satisfy everybody in this great gathering.

I want to talk to you for a few minutes, not as a visitor from a foreign land, but as a brother speaking to his brethren practicing one of the most honored and noble professions of all time. After all, we are members of the Bar, and whether we be north or south of that line we have common problems and common things to meet as we go through life practicing that profession.

Ten years ago, on that black October day, you will remember that there came not only here, but in the whole world, the beginning of the worst depression I think time has ever known. There came a depression that challenged the skill and the ingenuity and the courage of statesmen throughout the world, and the horror and the terror of that depression was that, unlike the panics of days gone by, it appeared to be a thing that was going to stay with us for some time.

It brought with it the things that depressions often bring. It brought a break in morale, it brought hysteria, it brought broken hearts, it brought unemployment, and it brought those things that make people begin to think that maybe things are not all well in the world. And on it went getting worse, on it went getting blacker, and as it went on it developed, as you saw in the country, strange notions and strange ideas amongst the people. People forgot the old order, people forgot the faith of our fathers, people started to preach false doctrines, and that thing that we call a subversive influence was spreading about in Canada, in the United States, and in every part of the world that had come within the grip of that depression. On and on it came, down like a torrent, like an avalanche, crushing and rolling on, leaving in its wake, in the minds of the people the danger of changing things as we had known them, of changing principles, changing doctrines and, above all other things, changing those safeguards that were near and dear to the hearts of the people who love constitutional government, to the hearts and the people who love liberty itself. (Applause)

While this was going on, there was one man who stood firm, there was one man who believed in that thing we call law, that fundamental thing that watches over us and safeguards the life of every man and woman in the community. He saw it coming down, he saw the danger, and that man stood firm. Do you know who that man was? Well, it wasn't necessarily the big lawyer in the big office. It was just the lawyer in Canada and the United States, it was just the lawyer in every town and every city and every hamlet and every village who, because of his training, because of his knowledge of these things, because of his knowledge of what law meant to humanity, stood firm in fighting back that avalanche that would have changed the whole face of the North American continent if it hadn't been counteracted by some knowing influence. (Applause)

Why did he do that? Why did this man stand there and say, "These changes that must take place will be orderly changes, they will be changes that will come in an orderly and in a proper manner?" He did that, my friends, because he knew that law made by lawyers, handed down by precedents going back for generation and generation, established and made and given to us by the greatest brains of the centuries, the brains, I tell you tonight, that were born in the cradle of the law; he knew, he knew well indeed that you can only have a democracy and you can only have liberty if you believe in law and if you believe in what law stands for. He knew what it was giving to these people, he knew what it meant to them, and he knew, as well, that it was not to be a thing that was to be changed or sacrificed without consideration.

My friends, he knew more than that. He knew exactly what your fathers had in their mind when they wrote your Constitution, when they wrote the Preamble to that Constitution, and they said that that Constitution would insure justice, that it would maintain for yourselves and your posterity the blessings of liberty. That lawyer knew that those were the things that meant more to humanity than anything else.

Do you realize what it really means? Oh, my worry is not what you think about it. My worry, my friends, is whether that man on the street knows about it. That is my worry on the North American continent today. Does he know what it means to maintain and preserve those good things that came from the old order, or is he a bit unconscious of it, is he a bit unmindful of the work that lawyers do and the service that they really give to humanity as they go on through life?

Do you know what law means when it gives you spiritual and intellectual and physical liberty? It means peace of mind and if you have peace of mind then you have confidence, and if you have confidence you have that which makes a nation progress and develop, and do what God intended every nation to do as each generation came and passed on through this life. That is what law has given to the people down through the generations, and that is why it is a precious thing, a thing you should hold on to, and a thing that you should guard with the utmost jealousy. (Applause)

But my fear is not that you and I know that. Law is a very, very simple thing, simply rules and regulations that are made for the government or for the regulation of mankind in his community. It doesn't matter, my friends, whether it be a common law or equity, or the statute law, you know if you study it, it all comes down from the Sermon on the Mount. That is where it comes from. That is what it means to humanity today, and that is why it is so necessary that the man on the street should appreciate and should know what the guarding and the maintenance of that means to mankind. And I ask you lawyers here, does he know? Are you sure that he knows? Are you sure that that man on the street knows that when he sees a lawyer who lives up to your Canons of Ethics, that when he sees a lawyer who has in his heart the true spirit of the service, that that man he sees walking down the street is a man who has dedicated his life

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to the betterment of his community and the betterment of the nation in which he lives? That is what I want that man to know. That is what I want the lawyers of Canada and the United States to tell that man on the street.

Maybe he does know, and I think in his heart of hearts, away down, the man on the street has that appreciation of law, but sometimes he is a little bit indifferent about it and hardly conscious of the existence of the meaning and the importance of the preservation of the things that law stands for.

You know, it is something like our belief in the immortality of the soul. We are a little careless about that sometimes, but suddenly confront a man with death and that man will inevitably turn to God. You know that and I know that, and I think there is the same belief in the heart of the layman about law, if he has an opportunity to understand, and having brought to his mind what the sacred protection of law means.

Now you will ask tonight, "What is this man getting at? What is he afraid of? What is he talking about?" I am afraid, my friends, that the dignity and the majesty of the law is not being maintained or held on as high a level as it ought to be, and has been in days gone by. I am afraid there is a tendency, in this depression I have been talking about, on the part of the men who call for changes when no change is necessary, on the part of men who are justified, if you please—at least this is what I find in my country—in calling for reform, but not justified in doing things they ought not to do under the cloak of reform. (Applause)

That is the thing that is worrying us today, this constant cry for reform. Any man who would say that you do not need reform is mental. Time marches on, conditions change, the machine age advances, you are confronted with propositions you never had in your life before. New conditions, greater competition, greater unemployment, new problems and difficulties—every one of those demand reform if you like to keep step with changing conditions. But I say to you tonight that reform is not a thing that must come crashing and smashing everything that belonged to the old order and substituting untried things for things that have been tried for generations. (Applause)

You know the greatest thing that could happen to the North American continent would be a realization by the man on the street that during these generations those great minds wrestled with the problems of humanity and handed on to us many things that we might well continue and well follow. But I disagree with the man who thinks that because you are in a panic, because you need reform, you can condemn everything that is old. (Applause) In my opinion, the reason a lot of those things are old is because they have stood the test of time. Just stop and imagine the things that are handed on by way of judgments and precedents by men like Mansfield and Marshall, and then ask yourselves, does this modern reform mean the scrapping of the old order altogether?

I think when those things were handed on to us in our day and generation, our duty was to make the best use of those that are good, improve upon them if you can, but don't scrap them simply because they are old things.

Now that is what we have seen happen in our countries; this new despotism, this idea of the civil service, that untrained people should try cases and determine rights, and deny that man on the street access to the courts that he always has been and should be entitled to when he wants a trial at the bar. I tell you tonight that I don't think there is anything that will break faith and break confidence and break hope in a man quicker than knowing that he is not going to have that right to walk into that court of justice and plead his case before an independent judge and tribunal, and not before a tribunal that is beholden to one of the parties in the suit that is being tried. (Applause) Stop and consider what that sort of thing means to that litigant and to you. He loses faith in government. Government is the top of everything, and if he loses faith in the government, then he joins the crowd that is marching on toward chaos.

What we want is this: To maintain the best of the very best that is in that old order, and remember that in those many days gone by those men who struggled with the common law, those lawyers, were the people who gave the man on the street the most precious things that that man on the street has. Did you ever realize the things that law has given to the ordinary citizen? The sanctity of the home, the liberty of the subject, the protection of the widow, the security of business, the enforcement of contracts, the guarantee of future rights, protection against fraud, protection against deceit, standing by the weak, standing by everybody along that solemn course, the course that your forefathers gave you in the Constitution, the establishment of justice, the establishment of intellectual, spiritual and physical liberty. Let those things be put in danger and you lose everything.

If a man knows that this liberty is guaranteed to him, that he has a right to take that knowledge and that brain that God gave him, that he has a right to make the things that he is able to make, to say the things that he wants to say, to write the things that he wants to write, to create the things that he wants to create, then he goes through life as a man who is making and building and adding progress to his community and his country. Interfere with those things, you kill advancement, you kill his spirit, you kill the development of new things that down through the ages have always served humanity from generation to generation.

So I say to you tonight, if you want reform, reform is all right, but let it be orderly reform and let it be within the bounds of reason and good sense and good judgment, always having regard for the experience that we have had in the past. (Applause)

The message that I am trying to bring to you tonight is that it is the duty of every lawyer to do what he can to bring home to the man on the street an appreciation of what law is, and the contribution of the lawyer in his daily life, to the community in which he lives.

I hope tonight I haven't said anything that will offend anyone here. I didn't intend to do that. You know I am in public life as a manner of service, but next to my God and my family, I love my profession more than anything else. That is what I want to serve. I want to see those high ideals maintained. I want to see people who are not lawyers understand just what a life of service the life of a lawyer is to the nation, in whatever country he lives.

There is a friend of mine in Victoria whose name is Sandham Graves. He is an Irishman, and he wrote a column in the old British paper called "The

Colonist." During those hard, bad times when we were afraid of war and we didn't know what was going to happen, Sandham Graves looked out of the window and saw a little bird on a tree, and he wrote down what he thought the bird was thinking about the dictators. And do you know what the bird said?

"Again and again," said the bird,
"This lesson we all have heard:
That might can never make right.
For that was the code of the tooth and the claw
Long before Man discovered that law
Was the greatest might.
Man was guided to law by a higher hand
That he cannot see nor yet understand,
But one he can never escape."

That is what law means, and I have brought you this message tonight because I wanted you to know what I have been thinking. No Canadian can be vain enough or selfish enough to think that he could ever address the American Bar Association more than once, so tonight I have spoken to you, not from my head, maybe, but rather from my heart, because I love this profession and I want to march along with you making it a sweeter and a better thing, making it a profession that will receive the honor that the profession of the law deserves.

COMMANDER STEPHEN F. CHADWICK'S ADDRESS

MR. PRESIDENT, and Gentlemen of the American Bar Association: It was with great pleasure that I accepted the invitation of your President to be here today, not alone as National Commander of the organization which I this year have the honor to represent, the American Legion, but also as an individual member of this body, for after all, the Legion, for this year, is but my avocation, and the law will ever be my profession.

I have found a real joy in this year of service to the American Legion and so in what I consider a year of service to my country, nor is the year one in which my basic training in the law has been forgotten, for it has afforded me an opportunity to discuss publicly with lay audiences some of the fundamentals on which this great government of ours is based. We as members of the profession know the contribution of the lawyer to the declaration, establishment and preservation of our liberty. Too often in recent years has the demagogue assailed the lawyer. Too often has the lawyer been charged with obstructing progress, or what the demagogue calls progress, for not all change is progress. Too often has the bar as a whole been pilloried and assailed as reactionary. Too often has the liberal arrogated to himself all knowledge and branded as conservative and reactionary any and everyone who wishes to predicate his forward movement upon a knowledge of the mistakes of the past. I sometimes think that a liberal is one who wants to leap before he looks, while the conservative is one who at least wants to know where he may light if he leaps.

This year has afforded me the opportunity to tell the American public in every state in this union that in the opinion of a million men organized in the American Legion there is nothing reactionary in the Bill of Rights, the Declaration of Independence or the Constitution of the United States of America. These are our charters of freedom, charters which the lawyer has taken an oath to defend and perpetuate. We know that these declarations of the rights of man and institutions erected by the wisdom of man to preserve them were won after centuries of struggle. They constitute for man the basic hope of his security, his fundamental liberties, his inalienable rights, and it is these that the bar should be militant to defend. The spirit of our mutual covenants was freedom and liberty for the individual. The individual was vested with dignity, his rights made him a man free to enjoy life, liberty and to pursue his happiness. There is nothing reactionary in that conception, nothing reactionary in the defense of the rights of the individual against dictatorship from any source, whether one man or a class or even from a government, but eternal vigilance is ever necessary, vigilance of the mind and vigilance of the heart tempered and made strong with reason and knowledge.

Today as in times past the words of the siren with false doctrine attempt to propose philosophies incompatible with the spirit of freedom. It has been said "that everything that grows holds in perfection but a little moment and this huge state presenteth not but shows whereon the stars in silent influence comment." The life of a nation, like the life of a man, may be prolonged into the fullness of years, or it may perish from external violence or from internal decay. The excise of a diseased condition in the human body may prolong life, and the same is true of those conditions in the body politic, which if unattended to may ripen into cancerous growths. To save the people and their liberties from the dangers of internal decay is our everlasting duty as members of the bar.

An essential element of our conception of ordered progress is the preservation of the spirit of individual initiative and enterprise. To venture, to build and to create was an energizing factor released in the mind of man. This spirit of enterprise brought to us as a people material riches greater than the world had ever seen before. The spiritual background was that of a free people, all benefited. But today there are those among us who do not believe sufficiently in man's liberties and rights. There are those who assume the rostrum to tell us that we must blueprint our collective economy. To my mind that proposal has the familiar ring of the Communist 5-year Plan or the Nazi 4-year Program. It is another form of the age-old and manytimes tried compulsion which our forefathers rejected. It is the philosophy of defeat and despair. This country did not grow strong and great from a blueprint; it prospered because its people were free. There was no compulsion in our growth, although the siren voice mouths resort to the "catch phrases of liberty" in urging a regimented society. We have only to turn the pages of history to see the results of surrendering individual freedom to compulsion. It has been written many times on the pages of history but probably nowhere in so startling a parallel as in the history of the third century when Diocletian, after depriving the

Roman Senate of its power, loading the state with a backbreaking bureaucracy, and after driving taxation to the point of ruin, enacted his famous laws for the control and regulation of the one-time free citizens of Rome. Dr. J. H. Breasted in his recent work, "The Conquest of Civilization," summarizes it well. I quote:

"The financial burden of this vast organization, begun under Diocletian and completed under his successors, was enormous, for this multitude of government officials and the clamorous army had all to be paid and supported. It was a great expense also to maintain the luxurious oriental court of the emperor, surrounded by his innumerable palace officials and servants. But now there were four such imperial courts, instead of one. At the same time it was still necessary to supply 'bread and circuses' for the populace of the towns. In regard to taxation, the situation had grown steadily worse since the reign of Marcus Aurelius. The amount of a citizen's taxes therefore continued to increase, and finally little that he possessed was free from taxation.

"When the scarcity of coin forced the government to accept grain and produce from the delinquent taxpayer, taxes had become a mere share in the yield of the lands. The Roman Empire thus sank to a primitive system of taxation already thousands of years old in the Orient. It was now customary to oblige a group of wealthy men in each city to become responsible for the payment of the entire taxes of the district each year; and, if there was a deficit, these men were forced to make up the lacking balance out of their own wealth. *The penalty of wealth seemed ruin, and there was no motive for success in business when such prosperity meant ruinous overtaxation.*

"Many a worthy man secretly fled from his lands to become a wandering beggar, or even to take up a life of robbery and violence. The Roman Empire had already lost, and had never been able to restore, its prosperous farming class. *It now lost likewise the enterprising and successful business men of the middle class.* Diocletian therefore endeavored to force these classes to continue their occupations. He enacted laws for societies, guilds, and unions in which the men of various occupations had long been organized. These were now gradually made obligatory, so that no one could follow any calling or occupation without belonging to such a society. Once a member he must always remain in the occupation it implied.

"Thus under this oriental despotism there disappeared in Europe the liberty for which men had striven so long, and the once free Roman citizen had no independent life of his own. For the will of the emperor had now become law, and as such his decrees were dispatched throughout the length and breadth of the Roman dominions. *Even the citizen's wages and the prices of the goods he bought or sold were as far as possible fixed for him by the state.* The emperor's innumerable officials kept an eye upon even the humblest citizen. They watched the grain dealers, butchers and bakers, and saw to it that they properly supplied the public and never deserted their occupation. In some cases the state even forced the son to follow the profession of his father. In a word, the Roman government now attempted to regulate almost every interest in life, and wherever the citizen turned he felt the control and oppression of the state.

"Staggering under this crushing burden of taxes, in a state which was practically bankrupt, the citizen of every class had now become a mere cog in the vast machinery of the government. He had no other function than to toil for the state, which exacted so much of the fruit of his labor that he was fortunate if it proved barely possible for him to survive on what was left. As a mere toiler for the state, he was finally where the peasant on the Nile had been for thousands of years. The emperor had become a Pharaoh, and the Roman Empire a colossal Egypt of ancient days.

"The century of revolution which ended in the despotic reorganization by Diocletian completely destroyed the creative ability of ancient men in art and literature, as it likewise crushed all progress in business and affairs. In so far as the ancient world was one of progress in civilization, its history was ended with the accession of Diocletian."

We know that this is not an isolated page in the world's history but unfortunately a characteristic one in man's successive loss of liberty. Witness the dispatch from Moscow in the New York Times of May 28, where the Russian Soviet issued new decrees to punish the farmers because they had been guilty of working small plots of land in response to the age-old instinct for profit and the expression of individual initiative. Under no construction of language can such treatment be called democracy. It is dictatorship, no matter what the motivating force. Our forefathers opposed compulsion and our record through the years has indicated our attitude. We showed it on the historic occasion we now call the Boston Tea Party and in a recent decade we showed our attitude in the questionable attempt to enforce the Prohibition Act. Opposition to compulsion has characterized the every step of the Anglo-Saxon peoples as they through the long course of history have on this continent created the greatest government of free men. The cardinal principle of our course has been our antipathy to personal government. In the words of the great charter it is written "No free man shall be taken or imprisoned or disseized or outlawed or assailed or in any way destroyed, nor will we go upon him, nor will we send upon him except by the legal judgment of his peers and by the law of the land."

To avoid the dangers inherent in personal government we divided the functions of government into their well recognized classifications and we provided certain checks and balances. As members of the bar these are familiar to us. They are basic for the protection of our rights but today we witness a tendency to delegate functions of government to boards, bureaus and commissions. Some are permitted to combine the powers of prosecutor, fact-finder and judge; some given the power of issuing rules that have the force and effect of law. This tendency is reactionary. It is contrary to our conception of liberty. They have been styled new instruments of power, but in improper hands, in hands that are not imbued with the spirit of liberty, these powers are the tools of autocracy. The abnegation, the abandonment of duty by one branch of government to another and the usurpation of power by one branch from another can only lead to one thing—despotism. The promise of efficiency is too great a price to pay if man's freedom hangs in the balance.

There are functions that all men agree are the functions of the federal government, but the control of the daily lives of honest citizens in a nation whose borders are as far flung as those of the United States is not a function of government. The butcher, the baker, the agrarian, the manufacturer or the laboring man should not be under the necessity of going to the nation's capitol to secure a determination of his right to earn his daily bread and to eat it in the sweat of his brow.

An agency properly established and accountable

for its actions as it concerns itself with the dishonest citizen, the criminal, is the popular Federal Bureau of Investigation. It has won acclaim for its fine performance. It has not asked for law-making powers. It has not pre-tried individuals charged with crime nor has it deprived the citizen of the processes of the law, guaranteed to every individual, but while this agency has been winning popular respect, while confining itself to a proper federal sphere, we see other agencies operate so capriciously that one of man's hardest-won rights is currently lost in the arbitrary suspension of the fundamental rules of evidence, rules which have been born of the experience of centuries. Regardless of the good intention and represented beneficence involved in the recent action of the National Labor Relations Board in granting employers, or employes for that matter, the right of petition, such *grant* is inherently repugnant to the spirit of freedom. The law should be so clear that no agency can win commendation by making a gift of what should be a right.

These are problems that we as lawyers must be concerned with. We should not wait to discuss the rights of men in courts after their liberties have been legislated away. We must assert our influence and give to the Congress the benefit of our intelligence that they may preserve our liberties at the place of first danger, the place where the substance of statutory law is being made. A tendency against which we must be on guard is the tendency to abuse of the liberties of man, evidenced in class legislation. The Declaration of Independence and our Constitution recognize no class except the one and single class of free man, but today we see attempts to remedy alleged problems which some can see only from the standpoint of what we call capital or labor, and so they forget the problems of the nation as a whole, they forget the individual and they forget the rights of man. Such attempted legislation is an application of the Diocletian conception, another step along the road which led to the loss of the liberties of the Roman people.

In this country no individual is or should be classified. I am a laborer when I toil. When I save from the fruits of my work and invest, say, in an insurance policy, or make a deposit in a savings bank, I have assumed a function of the capitalist. When I work I suppose to some I am of the proletariat, and when I fish I suppose I am to them an economic parasite, but as a citizen of the United States of America I am at all times a free man, possessed of the classless rights of a free man, and these have recently been re-expressed for me in the significant report of the Dies Committee as rendered to the Congress in January of this year. They are my freedom of worship, of speech, of press and of assemblage; my freedom to work in such occupation as my experience, training and qualifications may enable me to secure and hold; my freedom to enjoy the fruits of my work, which means the protection of my property rights; my freedom to pursue my happiness, with the necessary implication that I do not harm or injure others in the pursuit of that happiness.

These my rights are not abstractions. They are the fruits of the toil and the blood of our Anglo-Saxon progenitors, of men who were unwilling to be serfs, men who were willing to stand their ground and fight, unwilling to become refugees in flight from the danger about them. Where, then, does our responsibility as lawyers lie? Our first responsibility is to be vigilant where laws are being passed, to know that there is a school of thought which today embraces the art of semantics and through that art seeks to sell new controls toward the goal of regimentation. The wiley Talleyrand boasted of the use of semantics as he deliberately confused the public mind to accomplish his own ends, but no trick of semantics can take away from the vigilant the substance of freedom, and as members of the bar, as lawyers who should know the use of words, we should read carefully each and every word and each and every implication that is contained in all proposed legislation. For we realize that if we compromise we start backward down the road of human progress and in but a few short steps we may be passing the tombstones of those who died for us that we might live in freedom.

To put it in a military vein, we cannot wait in the trenches to apply the ammunition of Blackstone, of Coke or of Story. The law is not and never will be static. It is a dynamic moving force and if we as a profession, protectors and defenders of the liberties of free men, take a leaf from the book of military experience we will observe that the best defense is a good offense. Vigilance implies not only strategy but tactics. We should not, if we believe the liberties of the people to be in peril, resign ourselves to a rearguard action. The ex-service man of the World War is organized to safeguard and perpetuate the principles of justice, freedom and democracy. It is our plan to safeguard and transmit to posterity these priceless privileges of free men. To that end we invite the considered support of all lawyers who truly appreciate their oath of office, men who know the background of the laws they administer. There is danger to a self-governing people when clients, because of the decadence of public virtue, employ lawyers not upon the basis of their professional knowledge or ability but because they "know their way around." The almost unchartable ramifications of present-day bureaucracy are creating this situation. It is everybody's business and yet nobody's business, but to the legal profession of America it should be a matter of their deepest concern, for in it is involved the substitution of a government of men for a government of laws and as that substitution is made there is no place for the legal profession.

I am an optimist. The minds of men in increasing number are rejecting the false doctrine and impossible performance of the philosophy of regimentation. Men are becoming restless to build anew, to venture and to prosper. The lawyer must be prepared to be in the vanguard of this movement, for with the return of this spirit the future of America is bright.

MR. W. F. LILLESTON'S ADDRESS

MR. PRESIDENT, LADIES AND GENTLEMEN: After listening to this generous introduction by President Hogan, I don't know when I have enjoyed a Presidential fireside chat so much.

In response, my first impulse is one of appreciation towards the city which is our host. It is singularly appropriate that we should meet in San Francisco, because at some time in his life every lawyer upon admission to the bar has solemnly raised his right hand and taken the Franciscan vow of poverty. As Venice is the bride of the Adriatic, so is San Francisco the bride of the Pacific—or if some of the lawyers from other West Coast cities insist upon a polygamous compliment, I will say *one* of the brides of the Pacific.

What a comfort it is to know that the *gold* of the Golden Gate has not yet been withdrawn from circulation! And now that we have returned to this beautiful city, the World's Fair and the World's fairest—I have been wondering why we did not have a preacher here tonight to express our thanksgiving. But I suppose that, the Lord being over seventy years of age, the invocation was dispensed with.

But there are other reasons why I am glad to be here tonight. You see, in these days of the more abundant life, when "hope deferred maketh the heart sick," when "man never is but always to be blessed," here at the very threshold of Utopia and the poor-house, when we lawyers, like Cassius, have a lean and hungry look and our stomachs are in a state of suspended animation, this good dinner, this temporary return of "the full dinner pail," takes us back in memory to the good old "horse-and-buggy days," before the tax-payer was substituted for the horse, and when society was accustomed to drive to the right and not to the left. Those were the days before we found Mr. Hoover, with a nosegay in his hand, peeping "just around the corner" and flirting with that elusive coquette "Prosperity," who had just been liberated from the ticker-tape and who has since renounced the world and taken the veil. Those were the days before children ceased, and men began, to believe in Santa Claus. Those were the days when San Francisco, in an immortal moment of courage, rose from its ashes and built what we have seen today and yesterday. This magnificent enterprise of resettlement was accomplished before the day, and even without the help, of Professor Tugwell. Those were the days before doctrinaires taught children that patriotism is provincial, and religion a solecism of the mid-Victorian era. Those were the days before the kleptomaniacs of power in numerous nations mesmerized the masses with discontent and propagated the delusion that a substitute might be found for the goodness of God and the wisdom of constitutional restraint. Those were the days when in sunny Italy the children on the by-roads and the peasants in the fields sang the arias of the great composers, and *before* the days when in our own beloved America the dance of youth responded to the swing of "Minnie the Moocher," "Flat Foot Floogie," and "Red-Hot Mamma."

And now that the fallen angels of a Fools' Paradise have seized the reins of power in many lands, and dictators have become the principal "parts of speech" in a world of woe, there are many who come in sackcloth and ashes to the Wailing Wall and foolishly pray for the revival of "the buried majesty" of the good old days.

The good old days when the people from the country-side loved nothing more than to flock to the little county-seat towns to hear a criminal case tried by two air-conditioned pettifoggers! In those days that sacred thing called trial by jury was often just a drama of chicanery—played by two *"end* men" on either side of the counsel table, a foil on the witness stand, and a gaping gallery of twelve good and lawful men—drawn from the body of the county, but seldom from the brains.

It reminds me of the "dear dead days beyond recall" when I was a law student. A very urbane and intellectual lawyer had argued a technical will case before the county court. The judge of that tribunal was an irascible old hen; that is to say, he was a layman. After the distinguished lawyer had finished his argument and returned to his office, he was asked by another brother of the bar whether he had argued his case, and he answered, "Yes; as the old English lawyers used to say, 'the case is now in the bosom of the court.'" "Well," said the other lawyer, "it is to be hoped it is in his *bosom,* because it will never get to his *head."*

But we should not be too hard on our ministers of justice. We have more laws to bother us than any lawyers or judges on earth. If the number of laws were the index of a country's happiness, we now have in Washington and our various state capitals *forty-nine* legislative joy-factories. In the good old days, the "forty-niners" of California took the gold *out* of the *ground* and put it in circulation; but the forty-niners of the *present* day have taken it out of *circulation* and put it back in the ground.

Even the lawyers themselves are overwhelmed with the multiplicity and complexity of laws. We have our state laws and our federal laws; we must belong to the state bar and to the federal bar. It is like the situation of a young man that I once met on an ocean liner. I said to him, "What do you do for exercise on this voyage?" "Why," he said, "I exercise on the parallel bars." "Parallel bars?" I asked. "Yes," he said, "they have a bar *upstairs* and a bar *downstairs!"*

Being from Kansas, of course I was not much impressed, because in prohibition Kansas even to make the Biblical admission that "I was thirsty and ye gave me drink," is not permissible—however true. That is another advantage California has. In California you say, "The *spirit* is willing, but the *flesh* is weak." In Kansas we say, "The *flesh* is *willing,* but the *spirits* are weak."

However, in Kansas, ever since the good old days, the Puritan influence, the New England tradition has been deservedly dear to us. As the Mohammedans in their spiritual exultation turn to the Kaaba Stone at Mecca, so do we Kansans turn to that famous New England *Rock* whose private life was forever destroyed in 1620. There are persons, lacking a proper sense of historical perspective, who seem to think that the chief significance of Plymouth Rock is that it gives standing and authority to the genealogies of New England aristocracy and a famous breed of chickens. But Americans, I believe, still have enough of that so-called New England provincialism of the good old days to resent the present tendency to think more of the problems of foreign peoples than we do of our own. There are those who still believe, as Washington believed in the good old days, that we are not holding up the West side of the Atlantic Ocean merely for the benefit of European strategy; that we are the authors of a new hope and a different system to be independently maintained by us far away from that charnel-house of imperial intrigue whence our ancestors fled and escaped in the long ago. But if we *must* insist upon having a loud voice in the international chorus, I am in favor of emulating the police court culprit who said he wasn't doing a thing but standing on the corner minding his own business at the top of his voice.

While other continents are daily menaced with the spontaneous combustion of smoldering hate, I am happy that Canada and the United States—twin brothers of a common culture—offer an example to a harried world. So does the legal profession. For the law is the Bible of Peace.

Lawyers are a part of the greatest peace movement in the world—the daily pacification of the controversies of a nation's populace, the peace that dwells in every law office and in every court room of the land,

Three Principal Speakers at the Annual Dinner—(top, left to right) Stephen F. Chadwick, National Commander of the American Legion; Mr. R. L. Maitland, K. C., Representative of the Canadian Bar Association; and (lower) Mr. W. F. Lilleston, of the Kansas Bar.

Photos Gabriel Moulin

the peace of applied reason. This social significance of the law as an all-pervasive agency of peace, makes us proud that we are lawyers and the temporary trustees of a great tradition.

We are proud also that, in humbler walks, in the good old days, we were the father-confessors of the community. We knew the skeletons in the closets. They whispered to us their tales of human frailty. We knew the fallibility of our "poor earth-born companions and fellow-mortals." Our memories were stained with their tears. Our doors were ajar to all classes without distinction, and from them we learned the democracy of justice.

But the law, once our servant, had become our master.

Voltaire once said in the good old days that "to be free is to be subject only to the law." Well, suppose that Voltaire were an important American business man today, having a large payroll and a large patronage, *and subject only to the law!* Figuratively speaking, he would have a lawyer on one side, an expert accountant on the other side, a Wage-and-Hour timekeeper in front of him, a Social Security inspector behind him, a federal tax agent on top of him, a sales-tax auditor at the bookkeeper's desk, a C.I.O. delegation throwing curves at him, three strikes in the backyard, and a young umpire from Washington to call him "out"! And I can imagine the old French philosopher rising from his place and saying to the totalitarian powers thus encircling him, something like this: "Forgive me, gentlemen, but there is also the *wolf* at the door, and *I* haven't had *time* to read all of the Sibylline leaves that fall from all of the oracles of the new dispensation; and, although I belong to the Book-of-the-Month Club, I haven't had time even to read the new, revised editions of the Constitution, appearing monthly. You see, when I made the famous remark

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AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR
MANAGING EDITOR
Journal Office: 1140 N. Dearborn Street
Chicago, Illinois

THIS YEAR'S MEETING

Lawyers from all parts of the United States journeyed to San Francisco to take part in one of the most delightful and militant meetings in the Association's history. All arrangements for the sessions were most convenient and satisfying; the hospitality of our San Francisco hosts and the charms of the Golden Gate City and its environs were thoroughly enjoyed; and the sessions of the Association and its Sections were such as to command unflagging interest and make a genuine contribution to American public opinion. It was a fitting culmination of a notable year, during which the Association gained new friends and new allies in its efforts to improve the administration of justice and fortify the civil and political liberties of American citizens under the law. "Full speed ahead" for these fundamentals was the almost unanimous spirit and slogan of this year's meeting.

The registration from States east of the Mississippi was not as large as in some other recent years. This was expected because of the distances to be traveled, and the economic conditions affecting many members of the profession. A gratifying feature was that, nevertheless, the attendance at all sessions of the Assembly was larger than usual, which demonstrated that the member interest in the Assembly sessions is fully sustained when significant and useful matters are submitted to that body for discussion and, if need be, a vote. It was noteworthy also that on the many important matters on which the Assembly and the House of Delegates voted separately after full debate, no final divergence of opinion and action developed, although each the Assembly and the House made its contribution to the final action on many of the matters. The leadership of President Frank J. Hogan came to a most acceptable fruition in these sessions. Elsewhere in this issue will be found the details of the notable program of work accomplished at this meeting.

To President Hartley F. Peart and his indefatigable colleagues in the San Francisco Bar Association, the unbounded thanks of the officers and members of the American Bar Association are justly due. With the utmost generosity they gave without stint their time and their resources to the entertainment of the visitors in the gracious and agreeable manner for which San Francisco is noted. A friendly meeting was made memorable by their efforts.

The Association will meet in Philadelphia in September of next year. The adjournment of the 1939 meeting found more than usual readiness and enthusiasm for the work of the new Association year, with the experienced hand of President Charles A. Beardsley of California at the helm.

PRESIDENT HOGAN'S ADDRESS

The finest traditions of the long history of the American Bar Association were brilliantly fulfilled in the address of President Frank J. Hogan at the opening session of the Sixty-Second Annual Meeting. In a forthright but wholly dispassionate manner, he made a specific and stirring statement of the uneasiness and grave concern which many lawyers have lately felt, concerning the recent "important shifts in constitutional doctrines." For keenness of analysis, candor of statement, and incisiveness of phrasing, this address will be ranked high in the annals of the Association, by those who do not agree with it as well as by those who applaud its outspoken sincerity.

President Hogan appropriately recognized and stated at the outset that his subject was "controversial" and that the views expressed were his own and "should not be attributed to the Association." He frankly admitted that "many honestly differ from my opinion" and that "I may be mistaken and they may be right." Members of the Association hold and freely express a wide variety of views upon public questions, and the Annual Meeting is an open forum in which the reasoned views of any member may find voice and receive consideration, without commitment of the Association to them. The views and policies of the Association are decided and stated only by its representative House of Delegates, subject to a referendum vote of the whole membership

on major and controversial questions of policy.

The address stated facts and opinions which lawyers and other citizens should read and consider carefully. It is published in full in this issue, and pamphlet copies can be obtained from Association Headquarters. Probably no one will challenge his basic warning that in the presence of new constructions of historic constitutional provisions, far greater attention needs to be given to the selection of members of the legislative and executive branches of government. If that is done, "reliance against the arbitrary exercise of power" need not rest solely or primarily on the judiciary. The legislative branch of government can and should be faithful to its own concept of constitutional limitations; laws which offend those limitations are better left unenacted, rather than passed with a hope that the Courts will nullify them. Meanwhile, acute and active public discussion will go forward as to President Hogan's unanswered question: "Can a government which may arbitrarily control the individual's economic freedom be relied on permanently to keep safe his civil and political liberties?"

Full opportunity for the presentation of other views was deliberately planned and carried out. The thoughtful address of Senator Byrnes, of South Carolina, at the Wednesday evening session of the Assembly, and those of Solicitor General Jackson before the Sections, confirmed that in the American Bar Association sharp differences of opinion on controversial questions can be and are presented without that bitterness which would mar public debate.

PRESIDENT CHARLES A. BEARDSLEY

With the adjournment of the Annual Meeting, the baton of leadership in the Association passed to an able and tireless worker in the organized Bar, the choice of the Pacific Coast supported by a host of friends among lawyers throughout the Nation. The American Bar Association knows no sectional preference in its selection of presidents. Its leaders come from the North, South, East and West, as merit warrants. But there is always an occasion for especial gratification when the truly National character of this organization is attested by the choice of its President.

The new leader will need and will receive the same hearty and diligent support which has been accorded to his predecessors in generous measure. His long and varied experience in Bar Association work gives promise of mature and careful leadership.

Direction of the work and policies of the American Bar Association long ago ceased to have any of the aspects of a one-man job. Energetic and experienced lawyers have come also to the other posts of responsibility. Thomas B. Gay, of Virginia, was re-elected Chairman of the House of Delegates, over whose deliberations he has presided with marked fairness and equanimity. Messrs. Knight and Voorhees are to continue as Secretary and Treasurer, respectively, thereby keeping available to the Association their veteran service in its affairs. Invaluable members of the Board of Governors have ended their terms; new men of ability and experience, demonstrated through service in the House of Delegates from its founding, have taken their seats in the administrative board. The Chairmen and Councils of Sections reflect the growth and change which are constant in this dynamic organization. The Standing and Special Committees were fully constituted by the time the new administration took office.

To President Beardsley and his associates in this year's work, we extend the cordial congratulations and best wishes of American lawyers, who have come increasingly to recognize the importance of the American Bar Association to the profession and the public.

"PAT" MAITLAND

The Canadian Bar Association has honored the American Bar Association many times by sending to our meetings distinguished lawyers who brought cordial messages of amity and kinship prevailing in the profession of law on this Continent. Our visitors from the North have unfailingly given distinction to the meetings they have graced with their presence.

But none of them has more quickly and completely caught and entered into the spirit of an American Bar Association meeting than did the Honorable R. L. Maitland, K. C., the Delegate of the Canadian Bar Association to the San Francisco meeting. With his gracious wife, they seemed from the first as though they were of our own membership. They attended sessions and social occasions with a readiness which bespoke genuine enjoyment; their interest in controversial issues of Association policy was manifest. As in his own country, "R. L." was soon known to many as "Pat" Maitland.

As first speaker at the annual dinner, this doughty lawyer and legislative leader made a

truly eloquent and moving address. Through it rang out the eternal appeal of the peoples of the Americas for liberty and opportunity under the law—the realistic adherence to cherished institutions which had not been found wanting, the undaunted readiness to go ahead by trial and error in meeting the new conditions of modern society. The distinguished visitor stirred his brethren of the Bar to a fresh recognition that, irrespective of geography and forms of government, there are fundamentals of freedom for which the lawyers of every free country must stand firm at all hazards, no matter how ardent may be their desire to cope with humanitarian problems which at times invite governments into strange paths. Such a message knows no boundary line.

The lawyers of the States hail and thank the Bar of Canada for sending such an ambassador as "Pat" Maitland.

Mr. Lilleston's Address

(*Continued from Page* 681)

that 'to be free is to be subject only to the law,' I thought that 'the jealous mistress of the law' would flourish forever in unsullied spinsterhood. But I find that she has been stepping out a bit in America, and now her progeny are so numerous and there are so many little illegitimate laws that I am wondering: Isn't there any recourse in your country against *putative* fathers?" So much for Voltaire.

Thus in the same speech I have been praising and blaming the Jealous Mistress of the Law—showering her with roses when she was the handmaiden of Liberty, and pelting her with Pharisaic stones when she was taken in sin. For, as between law and liberty, the soul of Patrick Henry goes marching on. Indeed, so long as each man's mind remains, as it must, an individual thing, unique and peculiar to himself, men of strength will continue to fight as in the good old days for the right of the individual soul to pursue the destiny of its own choice upon the wings of its own desire.

The old saying that "Ye shall know the truth, and the truth shall make you free," reminds us that we live in a world of reality, and that this essential nature of things cannot be altered by the faith of the credulous in the incredible, even though espoused by the whole human race. No posse, with hue and cry, ever captured the truth; nor is it found in the ballot box. Truth is a hermit and doesn't mix with the crowd. It is no respecter of persons or politics. As solitary as thought and as impersonal as fate, truth remains in seclusion until it becomes the treasure-trove of genius.

Accordingly, in our calmer moments—perhaps at the end of the day, as we watch the burning tapers of the sky glow in the blue mosque of the night, or perhaps at the end of an *era*, as we stand reverently within the shadows that are falling upon the good old days—we lovers of democracy must realize that a great destiny still waits for a great leadership to find the lost art of national happiness in the quiet realm of truth and reality—not in the imaginary novelties of uncharted experiment, but in the just historical inferences of human experience.

(Top) Thomas I. Coakley, Chairman, Committee on Professional Entertainment; and (Bottom) Delger Trowbridge, Member of Executive Committee and Chairman of Committee on Arrangements, House of Delegates of American Bar Association.

ACTIONS TAKEN AT THE 1939 MEETING

ASSEMBLY AND HOUSE OF DELEGATES VOTED:

To increase number of Assembly Delegates to eight; four to be elected each year, for two-year terms.

To make the two-year terms of State and local Bar Association Delegates, etc., end with the Annual Meeting in even-numbered years.

To reduce the number of signers required for an "independent" nominating petition for Association officers, etc.

To make former members of the House of Delegates eligible for election to the Board of Governors.

To make the appointment of a Membership Committee in any State optional.

To create a Section on Taxation.

To abolish the Committee on Noteworthy Changes in Statute Law and several Committees whose functions are absorbed by new Sections.

ASSEMBLY AND HOUSE OF DELEGATES DEFEATED:

The "Lawther amendments" and "Martin amendment" to change radically the methods of nominating and electing officers and members of the Board of Governors.

Recommendations to abolish the Standing Committees on Aeronautical Law, American Citizenship, and Commerce, and the Special Committees on Economic Condition of the Bar, Judicial Salaries, Judicial Selection and Tenure, Securities Laws and Regulations, and Cooperation between the Press, Radio and Bar, etc.

Program of the Bill of Rights Committee was upheld and approved, and grant of $24,000 from the Carnegie Corporation for its work accepted.

Proposal that the Association ask for increase in the salaries of all Federal judges was defeated as untimely, in view of need for drastic economy in Federal expenditures.

Endorsement for proposed special Circuit Court of Patent Appeals was refused, and the matter was referred to the Committee on Jurisprudence and Law Reform for report as to the relationship of such a specialized additional Court to the Federal judicial system as a whole.

Recommendation was adopted approving in principle the introduction of public defenders in Federal Courts, with a vote also that for State and local Courts the providing of defense for needy persons be worked out according to local conditions and facilities.

Program reported by the Committee on Jurisprudence and Law Reform was approved, and the Committee was authorized to press for its passage by the Congress; the Sumners Bill for a more summary method of impeachment trials for Federal judges below the Supreme Court was withdrawn from the authority of the Committee.

American Bar Association medal was conferred on Major Edgar Bronson Tolman for distinguished services to the Association, the Bar, and the public.

Provision was made for a study and report, by a representative Committee, as to better public relations work by and for the Bar Associations.

Steps were taken to curtail the number and size of Section Committees.

Authorization was given for the Association's cooperation in an appropriate observance of the 150th anniversary of the first meeting of the United States Supreme Court; Major E. B. Tolman will head the Committee.

The bombing of civilians by air raids in warfare was condemned; action as to the expropriation of oil properties in Mexico was refused; and action on other proposals in the field of international law was deferred.

Significant recommendations in the field of the law of Federal Taxation were approved.

Philadelphia was fixed as the place for the next Annual Meeting, to be held in September of 1940; and the House of Delegates will meet in Chicago on January 8, 1940.

Announcement was made of the subject for the Ross Essay Contest for 1940. It is: "To What Extent May Courts under the Rule-Making Power Prescribe Rules of Evidence?"

Resolutions expressing appreciation to the Bar Association of San Francisco and other organizations for delightful hospitality during Annual Meeting were enthusiastically adopted.

An Award of Merit was made to The State Bar of South Dakota and the Dallas Bar Association for the most outstanding and constructive work in their respective fields during the year 1939.

The policy of providing opportunity for discussion of questions of great national professional interest was continued by Open Forum on Preparation and Trial of Contested Matters under Labor Relations and Fair Labor Standards Acts at the Fourth Session of Assembly, and by Open Hearings and Institutes in Committees and Sections.

Various Resolutions for "stream-lining" the organization machinery, carrying out the ideas advanced in President Beardsley's talk to House of Delegates at its closing session, were passed.

A memorial to the late Robert E. Lee Saner, former President of the Association, was read and ordered spread on the records.

OUR NEW PRESIDENT: CHARLES A. BEARDSLEY

CHARLES ALEXANDER BEARDSLEY, newly-elected President of the American Bar Association, has practiced law in the same Oakland, California, law firm for 31 years—ever since his graduation with honors from the Stanford University Law School in 1908. He is a prodigious worker—his admirers say he keeps as busy as three ordinary lawyers—and it is probably safe to say that no other lawyer in the American Bar Association keeps his schedule of hours.

It is the astounding habit of Charles A. Beardsley to get up out of bed and go down to his office every day of the week at some hour between 2 and 5 o'clock in the morning. This has been a lifelong habit, and it is a little late to expect him to break it, even though he is, at 57, the senior partner of a prosperous firm, with every right to be looking out for his leisure.

The explanation for Mr. Beardsley's unexampled devotion to his work during the pre-sunup hours is not at all spectacular. He is absorbingly interested in the practice of law, believes in practicing as an individual, without relying on his younger associates to supply him with briefs, and realizes that for uninterrupted reading, writing and thinking—all vital in the preparation of a law case—the early hours of the morning are vastly more productive than the late hours of the night.

While a daily schedule of 14 or 16 hours implies immense vitality and driving force, which Mr. Beardsley unquestionably has, it does not imply that he is the overbearing, pushing, tycoon type who is prouder of long hours than of what he does in them. On the contrary, the new Bar Association President is charming, friendly, modest and a great believer in live and let live.

His own law office is a notable exception to the modern tendency toward "factory" organization and division of labor in big law firms. Young lawyers who come out of the Stanford and University of California law schools to practice with Fitzgerald, Abbott & Beardsley are put on their own initiative. Senior partners do not follow their young men to court to watch over their conduct of cases; in fact, Mr. Beardsley has never seen any of the younger men of his firm trying a case. In the same way his deceased partners, Robert M. Fitzgerald and Carl H. Abbott left him to gain trial skill on his own hook. He is thankful for this, convinced that it taught him the most important lesson a young attorney has to learn, that of self-reliance.

As a leader in bar association activities, both in California and nationally, Mr. Beardsley has found one of his main interests to be the proper training of young lawyers. Years ago he concluded that, even in the best law schools, young men were not being taught enough about the actual work of conducting a law office. They were learning little or nothing about the drafting of documents. So nine years ago, Mr. Beardsley began teaching Stanford law school seniors how to draft legal documents. His rule is: "Never use two words when one will do (a refutation of the common practice never to use one when a synonym can be slipped in with it) and use one-syllable words wherever possible in preference to polysyllables."

"When you finish," Mr. Beardsley tells his young students, "you should have a document which any layman can read and understand without having to go to his own lawyer for an interpretation."

Lecturing in law at Stanford provides Mr. Beardsley no salary but a rich compensation in the thrill of "keeping up on my toes among a group of young fellows who are very much alive and appreciative of the good one can do for them."

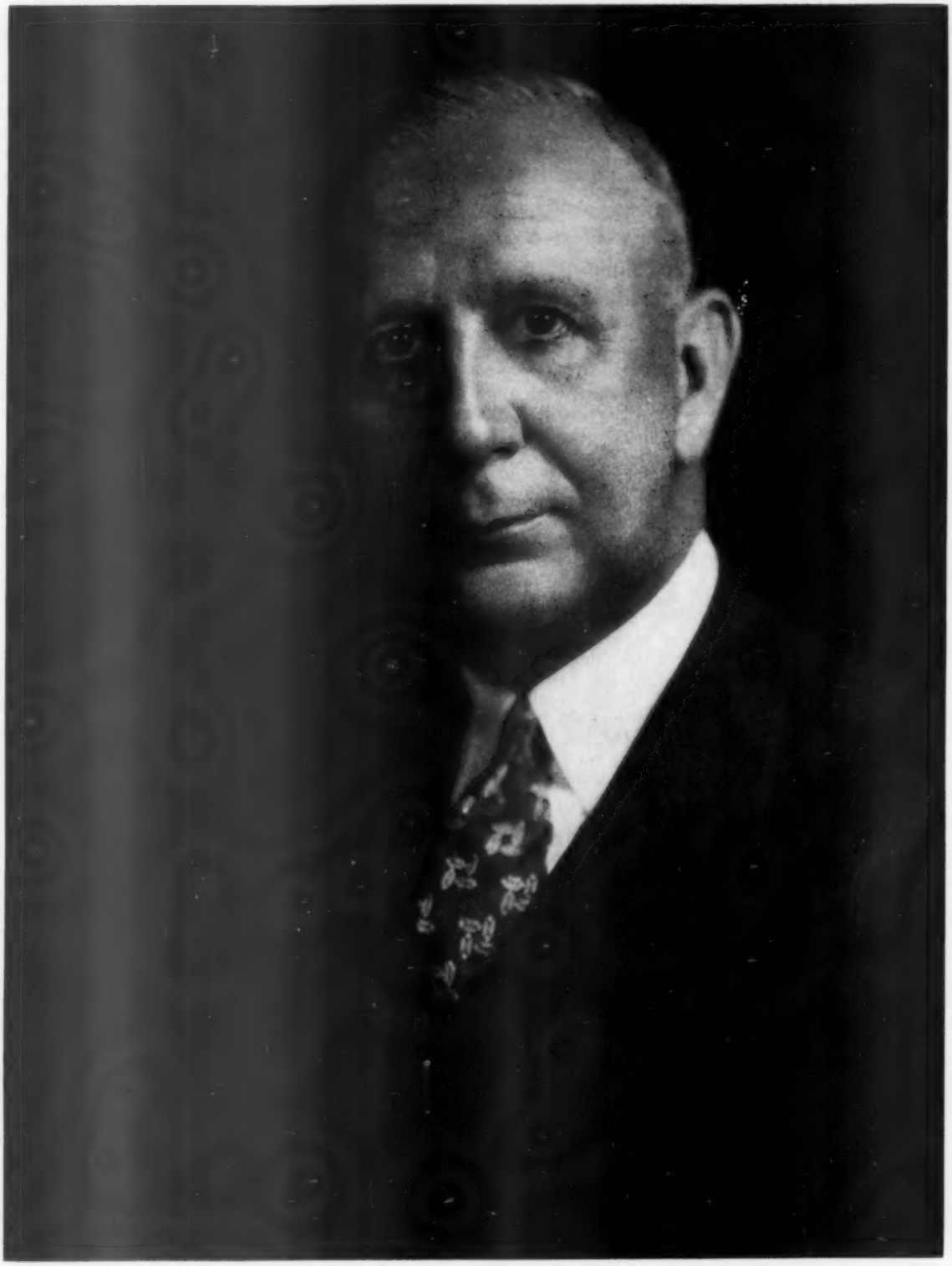
Mr. Beardsley's own schooling was obtained largely through his own efforts. He was born in Townville, Pa., January 14, 1882, went on his own at the age of 13 and put himself through high school in two and one-half years. At Stanford he supported himself, made Phi Beta Kappa, and was graduated with the A.B. degree in 1906. He went on in the Stanford Law School to take the J.D. degree with the Order of the Coif in 1908, having passed the California State Bar examination before finishing his law course.

Three years after starting practice with Fitzgerald & Abbott, Mr. Beardsley was appointed assistant city attorney of Oakland, in 1911. He served four years in this capacity, handling the legal end of several important issues of bonds for the acquisition of municipal properties and improvements. Meanwhile, in 1913, he was made a member of his firm.

When in 1927 California lawyers took the progressive step, since widely emulated, of organizing the entire legal profession as a self-governing corporation, Mr. Beardsley was in the van of organizers. He was a member of the State Bar Commission which was appointed to organize the State Bar of California under the State Bar Act of 1927. Following the organization of the State Bar he was elected a member of the Board of Governors and continued to serve as a member until his election as President in 1929. He served as President of the State Bar of California in 1929-30, paying particular heed to the establishment of high standards for admission to practice. He was a member of the California Code Commission, 1932-34, and a Vice Presi- of the American Bar Association during the same period. In 1934 he was made a member of the executive committee of the American Bar Association and in 1936 he was made a member of the Board of Governors, and has since worked influentially toward the solution of problems affecting lawyers the country over. He has been a constant advocate of an organized Bar for all States, and he expects to give much of his time as President to this activity. He took a leading part in the battle waged by the American Bar Association against President Roosevelt's court-packing plan.

Since 1931 Mr. Beardsley has held the rank of Lieutenant Commander in the United States Naval Reserve, Judge Advocate General's Department. He is a recognized authority on international law and has given the lecture course on international law for reserve officers. He is a member of the American Law Institute, the American Judicature Society, the American Society for International Law, and the legal fraternity of Phi Delta Phi.

As the American Bar Association, in recent years, became more and more of a working organization, it was increasingly evident that it could not be really consistent without naming that worker *par excellence*, Mr. Beardsley, as its President. He has long been known not only in his own State but throughout the nation for his outstanding ability and tireless energy and persistence in behalf of the profession. His immediate plans for "stream-lining" the organization by removal of superfluous features, as announced at San Francisco, merely illustrate the fact he is running true to form and a year of energetic effort has already begun for the Association.



Kaye-Hart

HON. CHARLES A. BEARDSLEY
President, American Bar Association, 1939-40

ADMINISTRATIVE PROCEDURES UNDER THE FAIR LABOR STANDARDS ACT

In the Act as Finally Passed Congress Moved Sharply in the Direction of Narrowing the Scope of Administrative Discretion, and Rendered Self-Executing the Basic Coverage of the Act and Most of the Exemptions—Administrator Given No General Regulatory Power and Power to Issue Regulations Is Conferred only in a Few Specific Instances—Exemptions and Dispensations Dependent on Administrative Action—Difficulties Created by Phrase "Area of Production" in Section of Act Referring to Agricultural and Other Products—Exemption as to Industries of a "Seasonal" Nature—Procedure for Promulgating Wage Orders, etc.*

By Hon. Calvert Magruder

Judge United States Circuit Court of Appeals, First Circuit; Former General Counsel of Wage and Hour Division of U. S. Department of Labor.

WHEN President Hogan invited me to discuss the administration of the Fair Labor Standards Act at this meeting, I was General Counsel of the Wage and Hour Division, and ex officio might have been presumed to know something about the subject. Later, I was appointed to the bench, in which capacity I am not supposed to know anything until a litigated case comes before me and the lawyers proceed to educate me. I thought this intervening catastrophe would, of course, release the Bar Association from its invitation to me, but Mr. Hogan would not have it so. He assured me that I would not have to deal with the subject controversially, but that I was to assume the Fair Labor Standards Act as one of the facts of life, and merely describe how business is done in the office of the Administrator of the law. If I had to deal with issues of constitutionality or of the sufficiency of administrative procedures from the standpoint of due process of law, there would obviously be the makings of a Gilbert and Sullivan comedy, in respect to the capacity in which I was supposed to be speaking. In my capacity as General Counsel, I might make arguments which in my judicial capacity I might feel impelled to controvert; and in my expiring capacity as a Law Professor I might be obliged to demonstrate the utter absurdity of both my previously expressed viewpoints. Consequently, if must be understood that my function on this platform is merely of a descriptive or expository nature.

Under the original Black-Connery Bill, out of which the Fair Labor Standards Act ultimately emerged, the basic wage and hour standards prescribed by Congress did not go into effect automatically. An Administrative Board was to be empowered from time to time by regulation or order to declare such minimum standards applicable to employments within the scope of the Act, as rapidly as the Board should find that these standards could be made applicable without unreasonably curtailing opportunities for employment. Thus, the application of the Act to particular employments was to be dependent upon prior administrative action. In this earlier draft, the Administrative Board was also given power, after investigation and hearing, to raise the minimum wage for any occupation in which the employees are engaged in interstate commerce or the production of goods for such commerce, to an upper limit of 80c an hour. Likewise, it was proposed to invest the Board with broad powers of exemption, and with a general power to issue regulations deemed appropriate to carry out the provisions of the Act. Even in the politically delicate matter of agricultural labor, the statutory exemption did not describe in detail what employees should be considered as agricultural laborers, but merely provided for the exemption of agricultural laborers as the term is "defined and delimited by regulations of the Board." As to hours, there was a broad prohibition against working an employee in excess of the specified maximum workweek; except that the Board was to be given power to provide by regulation or order for overtime employment for periods of seasonal or peak activity, or other emergency work, and to prescribe the wage rates to be paid for such overtime employment. Another illustration of the breadth of the administrative discretion contemplated in the Black-Connery Bill was the provision authorizing the Board by regulation or order to provide for "suitable treatment of other cases or classes of cases which, because of the nature and character of the employment, justify special treatment."

In the Fair Labor Standards Act, as it finally passed, the Congress moved sharply in the direction of narrowing the scope of administrative discretion, and rendered self-executing the basic coverage of the Act and most of the exemptions. The powers now vested in the Administrator are modest in scope and familiar in character. He is given no general regulatory power, but the power to issue regulations is conferred only in a few specific instances, such as the power to prescribe the records to be kept by employers subject to the Act (Section 11 (c)), and the power, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide for the employment of learners, apprentices, messengers and handicapped persons at wage rates less than the normal minimum. (Section 14)

Congress itself provided, in the Fair Labor Standards Act, a basic minimum wage of 25c an hour, to

*Address delivered at the meeting of the Assembly Thursday, July 13, in the "Open Forum on Preparation and Presentation of Contested Matters under Labor Relations and Fair Labor Standards Acts."

be automatically stepped up over a period of seven years to an ultimate of 40c an hour. It provided also a normal basic workweek of 44 hours, to be decreased to 42 hours this coming October, and to an ultimate of 40 hours per week in October, 1940; employment in excess of these stipulated hours, however, is not prohibited, but only subject to the obligation on the part of the employer to pay for such excess hours at a rate not less than one and one-half times the regular rate. The coming into effect of these statutory minima is not dependent upon any prior administrative action. By force of the statute itself, these minima apply to employees "engaged in commerce or in the production of goods for commerce." Whether a particular employee is so engaged thus becomes ultimately a matter of interpretation for the courts. The Administrator is not empowered to make any binding rulings on these matters. He has from time to time issued what he calls "interpretative bulletins" merely to indicate the interpretation of law which will guide the Administrator in the performance of his administrative duties until directed otherwise by authoritative rulings of the courts. Though the issuance of these bulletins is an exercise of the administrative process in a broad sense, and though the Administrator's interpretations will undoubtedly carry weight with the courts, employers cannot rely with complete assurance upon an interpretative bulletin expressing the opinion that particular employments are not covered by the Act, for the statute gives employees a direct right of action against employers for double damages, entirely independent of any control by the Administrator. Consequently, the Administrator has had to be cautious in issuing interpretations which profess to exclude any one from the coverage of the Act; and in many cases, employers, who normally would be emotionally antagonistic to the vesting of vast powers in an administrative official, have been much irritated when the Administrator told them that he did not have power under the Act to tell them whether they were covered or not.

When the Administrator receives a complaint that an employer subject to the Act has violated its wage and hour provisions, he causes an investigation to be made by an inspector. For this purpose, extensive powers of investigation are conferred upon the Administrator, including the power of subpoena. If this investigation indicates a violation, the Administrator has the alternative of referring the case to the Department of Justice for a criminal prosecution or of filing an equity suit in a Federal District Court praying for a decree ordering the employer to cease and desist from violating the Act. In the current discussions on administrative law problems one hears a great deal of criticism about combining in an administrative agency the functions of prosecutor and judge. Mr. Fahy will, no doubt, tell you on behalf of the National Labor Relations Board, that there is little or no substance to this criticism. However that may be, the fact remains that this criticism, whatever its merit, cannot be directed at the Fair Labor Standards Act. When Mr. Fahy moves in a Circuit Court of Appeals for a decree requiring the employer to comply with the National Labor Relations Act, the case is heard on an administrative record in which the Board has already found the employer to be in violation of the law, and the findings of the Board, if supported by evidence, are conclusive. By way of sad contrast, when the poor Administrator of the Wage and Hour Division finds upon investigation that the employer has violated the Fair Labor Standards Act, he must, in order to get an injunction, go into a Federal District Court in an original proceeding, and prove the employer's violation in a trial de novo before the Court.

I shall speak now of the few instances in the Fair Labor Standards Act of exemptions and dispensations which are dependent upon administrative action. As I have said, most of the exemptions in the law are self-executing. The Administrator is given no such broad power as was proposed in the original Black-Connery Bill, to make regulations providing for suitable treatment of particular cases "which, because of the nature and character of the employment, justify special treatment."

Section 14 provides that the Administrator, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of learners, apprentices, messengers, and handicapped workers, at wages less than the normal minimum wage. Of these four categories, the administrative provisions as to handicapped workers and learners are the more important and I shall confine myself to these.

It was obviously proper to provide special treatment for individuals "whose earning capacity is impaired by age, or physical, or mental deficiency or injury." Regulations have been issued by the Administrator under which special certificates are being issued authorizing the employment of such handicapped persons at rates less than 25c an hour. Ultimately, applications for such certificates will, I suppose, be handled at local offices, but up to the present time the Wage and Hour Division has not had sufficient funds to do much in the way of decentralizing its activities in regional or local offices. Consequently, applications for handicapped worker certificates, which must be made on official forms furnished by the Wage and Hour Division, and must be signed by both the handicapped worker and the employer, have to be sent to Washington, where they are acted on in the first instance by the Hearings and Exemption Section of the Division. The procedure is simple. According to the last figures I have received, about 4800 applications have come in. Of these, about 1,700 have been granted. Special certificates were issued in most of these cases merely on the basis of the facts as stated in the applications. In particular cases, the Hearings and Exemption Section may call for additional data, or require the worker to undergo a medical examination, or require that certain facts be certified by designated officers of the State or Federal Government. The majority of the applications received to date have been denied, because they showed on their face that they did not comply with the requirements of the Act and the regulations. Provision is made in the regulations whereby any person aggrieved by the action of the Hearings and Exemption Section may within fifteen days thereafter file with the Administrator a petition for review. Review by the Administrator is not accorded as a matter of right; the petition is in the nature of a petition for a writ of certiorari. In the one instance in which such a petition for review has been filed, the Administrator caused a special investigator to be sent to the place of employment, as a result of which investigation, the original action by the Hearings and Exemption Section was modified to some extent.

The power to permit the employment of "learners" at less than the normal minimum rate has not been a matter of such vital moment as long as the basic

minimum remains at the beggarly 25c an hour. This will become more important when the minimum rate automatically goes up to 30c an hour in October this year. It will also become important in those industries as to which an applicable wage order issued by the Administrator may raise the minimum wage to an upper limit of 40c an hour pursuant to the recommendations of an Industry Committee—a procedure to which I shall refer in more detail later.

The Administrator has issued an elaborate set of regulations dealing with the employment of learners, together with an official explanatory memorandum. Official application forms are provided. Applications must be filed by individual employers and must be sent to Washington, where they will be acted on in the first instance by the Hearings and Exemptions Section. It is pointed out that the term "learners" means beginners at a skilled occupation; that unless the occupation demands the training and skill which is normally evidenced in higher earnings for experienced workers, a beginner at that occupation will not be deemed a "learner." The Administrator is authorized to issue certificates for the employment of learners only "to the extent necessary in order to prevent curtailment of opportunities for employment." The Administrator has, therefore, required that the application must show that experienced workers are not available to do the work for which learners are requested; the employment of inexperienced labor where experienced labor is available cannot be shown to be necessary to prevent curtailment of opportunities for employment. The application must also show that employment at the normal minimum wage of the number of persons sought to be employed as learners would so increase the employer's cost of production (a) that a reasonable employer in the circumstances of the applicant would not ordinarily hire the additional inexperienced employees for the operation of new plants, expansion of the plant, or rehabilitation of idle plant capacity, or (b) that the applicant would be so unreasonably burdened by hiring the additional inexperienced employees to replace the normal plant labor turnover as to make probable a resultant curtailment of opportunities for employment.

It is provided in the regulations that the Administrator may, if he deems it advisable, prior to granting any learner application, hold an industry-wide hearing to determine the occupation or occupations which require a learning period, to determine the factors which may have a bearing on the curtailment of opportunities for employment within the industry, and to determine under what limitations as to wages, time, number, proportion and length of service, special certificates may be issued to employers for any such occupation or occupations in the industry. Such an industry hearing will in many cases be a time saving device for the determination of factors common to hundreds of individual applications within the industry, and for the establishment of basic criteria for the disposition of the applications in that industry.

Several alternatives are provided for the disposition of a learner application:

First—The Hearings and Exemptions Section may deny the application forthwith on the ground that it fails to show that the occupation specified therein requires such skill as to necessitate a learing period, or fails to show that the dispensation is necessary in order to prevent curtailment of opportunities for employment.

Second—The Hearings and Exemptions Section may immediately issue a special certificate on the basis of the facts alleged in the application. In such a case, there will be published in the Federal Register a statement of the terms of the special certificate and a notice that for fifteen days following such publication the Administrator will receive written objections to such special certificate and requests for hearing from any persons interested. If such written objection is received within fifteen days and contains adequate and detailed grounds for objection, the Hearings and Exemptions Section will call a hearing on the question of affirming or cancelling the certificate. If as a result of this hearing the special certificate is cancelled, the employer must make reimbursement to all persons employed pursuant to the terms of the cancelled certificate in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons. This requirement of reimbursement is not in the nature of a penalty, but simply puts the employer in the same position he would have been in had he employed the workers without having applied for a learners' certificate. Since the special certificate, until cancelled, is legally operative, it saves the employer acting under it from any criminal penalty. In the case of an employer who on the facts is entitled to a learner certificate, the procedure affords a method by which the employer may obtain an immediate dispensation, without having to await the outcome of an administrative hearing. If the applicant is not sure of his grounds, and does not wish to risk the possible obligation to make up to the employees the difference between the applicable statutory minimum wage and the lesser wage authorized in the special certificate, he will wait for the lapse of the fifteen days' period within which objection may be made by interested persons to the granting of the certificate.

Third—Where the Hearings and Exemptions Section, upon inspection of the application is not clear that the application should be denied forthwith, or granted forthwith, as in the alternatives previously discussed, the application will be set down for a hearing, or other opportunity will be afforded the interested parties to present evidence or argument. Such a hearing may embrace a group of applications filed by persons in the same industry, concerning related issues of law or fact. In the event that the Hearings and Exemptions Section decides, upon such hearing, to issue a special certificate, it is empowered in its discretion to provide that such certificate shall be immediately effective, without waiting for action that may be taken on a possible petition for review. This is another provision in the interest of expedition. The action of the Hearings and Exemptions Section in granting the certificate is subject to review by the Administrator. If upon such review, the special certificate is found to have been erroneously issued, it ceases to be effective, not retroactively, but only as of the date of the publication of its cancellation.

No doubt, as the volume of business increases, the Administrator will find it expedient to set up within the Wage and Hour Division a Board of Review, to lift from his shoulders the administrative burden of reviewing actions by the Hearings and Exemptions Section on these applications for special certificates. No such Board of Review has yet been established, however.

Another statutory exemption which must be implemented by administrative action is the exemption from both the wage and hour provisions of the Act of "any employee employed in a bona fide executive,

administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)" (Section 13 (a) (1)). The regulations defining these terms were issued by the Administrator without the formality of a public hearing. No such hearing is specifically required by statute, and as this power of definition is of a quasi-legislative character no such requirement of public hearing would be implied. However, before the regulations were issued, tentative drafts were submitted to and discussed with representative groups of employers and employees. Further, it is provided in the regulations as issued that any person wishing a revision of any of the terms of the definitions may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the definitions is set forth, he will either schedule a hearing with due notice to interested parties, or make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes.

Having issued his definitions of these exempted categories of employees, the Administrator has been frequently requested to issue rulings applying the definitions to particular employments. Possibly the Administrator would have the power to issue such rulings, as being in the nature of a more precise defining and delimiting of the terms used in the statute. The Administrator, however, has refrained from doing so, because the administrative burden would be overwhelming. The representatives of one industry came to the Administrator with over six hundred separate occupations which they requested the Administrator to classify in accordance with his definitions. In view of the fact that such classifications would involve putting employees under or taking them out of the coverage of the Act, it would seem that the Administrator, even if it were otherwise feasible to undertake the job, ought not to rule on the classification of specific employments without some sort of hearing at which both employers and employees would be represented. Requests for rulings on ex parte statements of fact have regularly been denied whether such requests were submitted by representatives of employers or representatives of employees. The situation is, therefore, the same as if the definitions which have been promulgated by the Administrator had been directly written into the Act by Congress. In this case, as in the case of other exemptions, the employer must consult his own counsel as to whether particular employees are covered by the terms of the exemption.

Another exemption, from both the wage and hour provisions of the Act, which needs to be implemented by administrative action is the provision in Section 13(a)(10) exempting "any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products." This provision has caused an acute and continuous administrative headache. A brief general definition of the term "area of production" was issued by the Administrator a few days before the effective date of the Act—it had been impossible to hold hearings prior to that date. It was provided that interested persons or associations wishing a revision of the definition could make appli-

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cation to the Administrator for a hearing. Pursuant thereto, several hearings have been held to consider the definition of the term "area of production" as applied to various agricultural commodities. Several revisions of the definition have resulted. These revisions, however, have made many people unhappy, and inescapably so because of the nature of the task which has been put upon the Administrator in this instance. In identical letters to the Speaker and to the Vice-President, dated April 19, 1939, the Administrator made this formal statement to the Congress:

"As Administrator, I have been beset with manifold difficulties in attempting to issue a definition of 'area of production' which would be in accord with the expressed intent of the Congress, and at the same time would avoid the creation of chaotic conditions in the competitive positions of employers similarly situated.

"Before exercising the power to define 'area of production,' I considered the possibility of mapping producing regions for each of the many agricultural and horticultural commodities. This procedure was found to involve the mapping of producing regions and locations of processing establishments and concentration points for several hundred individual commodities, as to many of which area lines could not practically be drawn. That procedure, besides leading to discrimination against plants on the border lines of areas, would have required several years and would have involved great expense. The plan was therefore abandoned as impractical.

"The term 'area of production' is subject to a great variety of possible interpretations. The term was used previously in the N. R. A. definition of agriculture and was the cause of serious administrative difficulties at that time. Its history under the Fair Labor Standards Act has been even more disturbing. Each industry to which the term might apply interprets it in such a way as to mean complete exemption of all establishments in that industry. Thus, for example, cotton handlers consider the

'area of production' for cotton to be the entire area in which cotton is grown, ginned, stored, or compressed, although that means including all or large parts of at least eleven states in the 'area of production,' or in other words all areas where these operations occur. That type of definition, of course, renders the term meaningless in any such limiting sense as the Congress obviously intended. Where the Act provides blanket exemptions, it is explicit in so doing. It does not so provide in this section.

"Labor, on the other hand, would define 'area of production' in such a manner as virtually to exempt no one.

"Aside from the uncertainty of the term, the basic idea underlying this exemption raises a serious economic question. It contemplates exemption of only such employers or employees as are located or employed within the 'area of production.' It therefore requires the drawing of a line, on one side of which all employers and employees are to be exempt, while on the other side they are not to be exempt. The operations within or without the 'area of production' may be the same and may be performed upon the same products.

"No matter what approach is taken to define this term, inequities will result. Some enterprises will be barely within the 'area of production' and others, directly competitive, just outside; some farms will be in the area with reference to the processor handling their crops, and others, though growing the same crops, will be outside this area. It is earnestly urged, therefore, that the wage and hour coverage of the Act should not depend upon the proximity of the operation as to the area in which the raw products are grown."

The Administrator then proceeded to urge that the processors of perishable or seasonal agricultural commodities affected by this exemption do not need an exemption from the wage provisions of the Act, but should have some exemption from the general limitations as to hours prescribed in the Act. He accordingly recommended an amendment to the Act which would (1) eliminate the term "area of production"; (2) grant to the industries in question an adequate exemption from the hour provisions; and (3) make the wage provisions applicable to them.

Still another exemption which requires administrative action has to do with the relaxation, in favor of "an industry found by the Administrator to be of a seasonal nature" (Section 7 (b) (3), of the general requirement that hours worked in excess of 44 hours per week must be paid for at the rate of time and one-half the regular rate. In the case of such seasonal industries, it is permissible to work employees, during an aggregate of not to exceed fourteen workweeks in any calendar year, for more than 44 hours a week without the payment of overtime at the time and one-half rate; Provided, however, that such time and one-half rate must be paid for employment in excess of 12 hours a day or of 56 hours a week. The term "industry of a seasonal nature" is not defined in the Act, but it appears from the legislative history that Congress did not intend to include within the dispensation all plants whose production throughout the year may be subject to greater or less peaks or recessions. Apparently, it was not a question of a seasonal market or demand for the goods, but rather a question of seasonality of production predicated upon the fact that the raw materials utilized, owing to climate or other natural conditions, are available only during a portion of the year. Accordingly, the regulations issued by the Administrator defined the exemption as applicable to an industry which "both (a) engages in the handling, extracting or processing of materials during a season or seasons occurring in a regularly, annually recurring part or parts of the year; and (b) ceases production, apart from work such as maintenance, repair, clerical and sales work, in the remainder of the year because of the fact that, owing to climate or other natural conditions, the materials handled, extracted, or processed, in the form in which such materials are handled, extracted or processed, are not available in the remainder of the year."

The statute does not specifically prescribe a hearing for the determination of whether an industry is of a seasonal nature. Possibly a hearing is implied in the requirement that the industry must be "found" by the Administrator to be of a seasonal nature. However that may be, the regulations issued by the Administrator provide that formal written application for exemption may be filed by any industry or employer, or employer group therein, such application to state the facts and reasons relied upon to show that the employer or employer-group making the application is a part or the whole of an industry of a seasonal nature as defined. These applications are first considered by an official of the Hearings and Exemptions Section. In many cases, the application has been denied forthwith, without further proceedings, on the ground that it failed to allege facts indicating that the industry was of a seasonal nature as defined. In other cases, the application has been set down for public hearing with reasonable notice of the same published in the Federal Register. Any person aggrieved by the findings of the Hearings and Exemptions Section may within fifteen days after such findings file a petition with the Administrator requesting a review by him of the action below. If the request for review is granted, interested persons will be notified by notice in the Federal Register of the time and place and scope of the hearing on review. In the case of applications by various branches of the lumber industry to be recognized as of a seasonal nature, after the applications were denied by the Hearings and Exemptions Section, petitions for review were filed with the Administrator. The Administrator called for a hearing de novo, at which he personally presided, as a result of which he found and declared that certain branches of the lumber industry were entitled to the exemption.

A further alternative procedure is prescribed in the regulations whereby, in proper cases, an application for the seasonal exemption may be granted without the necessity for a formal hearing. Upon recommendation of the Hearings and Exemptions Section, the Administrator may notify the applicant of, and publish in the Federal Register and by general press release, a preliminary determination that a prima facie case for the granting of an exemption has been shown on the face of the application. If, within fifteen days thereafter, the Administrator receives from any interested person an objection to the granting of the exemption and a request for a hearing, such hearing will be called. If no such objection is received within fifteen days, the Administrator makes his findings upon the prima facie case and the exemption becomes effective upon his publication of the findings in the Federal Register. This procedure was utilized in the granting of a seasonal exemption to the natural ice industry and to certain branches of the tobacco industry.

At an earlier place, I referred in passing to the provision of Section 11(c) authorizing the Administrator to issue regulations requiring the keeping of records by employers subject to the Act. The statute does not prescribe a public hearing before the issuance of such regulations; and no such hearing was held prior to the issuance of the original regulations as to records. These

regulations, however, were drafted after informal conferences with the representatives of employers and employees. They provide that any person wishing a revision of the terms of the regulations on records may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment is set forth, he will schedule a hearing with due notice to interested parties, or make other provision for affording interested parties an opportunity to present their views, both in support of and in opposition to the proposed changes. A public hearing was held in January on the question of what, if any, amendments should be made to the records regulations, to require special or additional records to be kept by employers of industrial homeworkers. As a result of this hearing, the Administrator issued an amendment to the regulations, prescribing certain additional records to be kept by employers of homeworkers.

Up to this point, I have discussed the principal administrative procedures prescribed in the law for carrying into effect the absolute minimum in wages and maximum in hours as set by Congress itself. There remains to be discussed a very important administrative procedure for the promulgation of wage orders setting a higher minimum wage for particular industries. The Congress did not consider that 25c an hour was the ideal wage. Nor was it content with the further provision in the Act that the general minimum wage would automatically advance to 40c an hour after the lapse of seven years. It provided a further administrative procedure whereby the minimum wage, industry by industry, could be advanced to the ultimate goal of 40c an hour "as rapidly as is economically feasible without substantially curtailing employment."

Before the Administrator is authorized to issue such a wage order for a given industry, he must first appoint an industry committee composed of a number of disinterested persons representing the public, of whom one shall be designated the Chairman, a like number of persons representing employees in the industry, and a like number of persons representing employers in the industry. The statute defines in considerable detail the economic factors which an industry committee must consider as the basis of recommending a minimum wage rate. If this committee, representing the three great interests involved, does not, after a requisite study, recommend an increase of the minimum wage in the industry, the Administrator cannot proceed to issue a wage order. The Administrator, representing the authority of the government, is thus not empowered to act, until in the judgment of the industry committee, the economic conditions in the industry warrant an increase of the minimum wage. After receiving a recommendation from an industry committee, the Administrator, before putting the recommendation into effect by a wage order, must hold a public hearing, upon the basis of which he must find that the industry committee's recommendations are made in accordance with the law, are supported by the evidence produced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purpose of the statute. If the Administrator is unable to make these findings, he is not empowered to modify the recommendations of the committee, but may only disapprove the same, and refer the matter again to the old committee or to a new committee appointed for the industry. Even after an industry committee and the Administrator have both acted, and a wage order has been promulgated, the order is subject to review by a Circuit Court of Appeals of the United States.

The Conference Committee of the Senate and House, reporting on these provisions of the Fair Labor Standards Act, said:

> "This carefully devised procedure has a double advantage. It ensures on the one hand that no minimum wage rate will be put into effect by administrative action that has not been carefully worked out by a committee drawn principally from the industry itself and, on the other hand, that no minimum wage rate will be put into effect by administrative action which has not been found by an administrative official of the Government, exercising an independent judgment on the evidence, and responsible to Congress for his acts, to be in accordance with law."

The function of these industry committees is somewhat similar to the function of the trade boards appointed for the various industries under the English Trade Boards Act. They are more closely patterned, however, after the wage boards appointed under the New York Minimum Wage Law of 1933. Indeed, the whole procedure for the promulgation of minimum wage orders under the Fair Labor Standards Act is modeled closely after the procedure prescribed in the New York statute, a procedure which Mr. Chief Justice Hughes in his dissenting opinion in the Tipaldo case described as "careful and deliberate" and as disposing of "any question of any arbitrary procedural action" (Morehead vs. New York ex rel, Tipaldo, 298 U. S. 587, 619.)

Before appointing an industry committee for a particular industry, the Administrator must make an important administrative decision as to the scope of the industry. The statute defines "industry" in broad terms as meaning "a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed." The definition is, therefore, not so much a matter of law as one of administrative convenience. Close relationship between industries, either competitive or otherwise, make it desirable to cover as large a group of related manufacturing processes in one committee as possible, or, failing that, to appoint the several separate committees about the same time, as was done in the case of the textile committee and the woolen committee. The technical staff of the Administrator makes an analysis of definitions of the industry and all related groups in the field as used by the NRA, the Bureau of Census, and the Division of Public Contracts under the Walsh-Healey Act. An analysis is made of the problems of overlapping classifications and conflicting jurisdiction encountered under the NRA and in census taking; also an analysis of the factors involved in the formulation of a definition, such as the processes, products, crafts, occupations, and skills, and previous minimum wage determinations. This preliminary study leads to a tentative draft of a definition of the scope of the industry for which a committee is to be appointed. An effort is then made to secure informal consent to the tentative definition by representative employer and employee associations and other interested parties.

Considerable difficulty was met in arriving at a demarcation between the textile and woolen committees. One possibility might have been to include in the textile committee all branches of the textile industry dealing with the manufacture of cloth irrespective of what raw material was used. The argument was urged,

however, that the woolen branch had special economic problems not common to the other branches of the industry. Finally, it was decided to appoint a separate woolen committee, its membership overlapping somewhat with the textile committee, and with the same Chairman. At the outset, there was also some overlapping of jurisdiction as defined in the orders appointing the two committees. It was proposed by the Administrator that the two committees appoint subcommittees to try to arrive at an agreement as to what percentage of wool in yarns and fabrics should cause their manufacture to come under the jurisdiction of the woolen committee. The two committees finally reported to the Administrator their inability to agree upon the line of demarcation as a result of which the Administrator was compelled to exercise his ultimate authority to define the respective jurisdictions of the two committees. After this was done, each committee met again and voted its final recommendation for minimum wages to be established, in their respective industries.

In setting up a committee for the apparel industry, the Administrator tried the experiment of defining the industry in such broad terms as to include within one committee apparel groups who were covered by 30 or 40 separate codes under the NRA. The result was that this committee was of formidable size, a committee of 48 members. One might have anticipated considerable trouble in the deliberations of a committee of this size, but these fears did not materialize, and the apparel committee recently made a unanimous recommendation as to minimum wage rates to be established in the industry.

Another administrative decision which is lodged exclusively in the Administrator is the appointment of members of the industry committees. In the appointment of persons to represent each of the three groups, the statute directs the Administrator to "give due regard to the geographical regions in which the industry is carried on." This standard obviously cannot be applied mechanically; "due" regard for geographical considerations implies a weighing of this factor in conjunction with other factors bearing on the selection of a competent and workable committee. A tentative formula for employer representation and employee representation is worked out in consultation with trade associations, labor organizations, and other interested parties. When the formula for such representation is arrived at the Administrator in making appointments to the committee is generally guided by the recommendations of trade associations and labor organizations, though his power of selection is not thus restricted by law.

Under the statute, and the Administrator's regulations governing the procedure of industry committees, the committees are not required to hold public hearings. Interested persons do not have a statutory right to appear before such committees, or to cross examine persons whom the committee may summon before it. The committee may proceed with its investigations of the economic problems presented, in such way as it sees fit. The statute provides that the Administrator shall submit to the committee from time to time such data as he may have available on the matters referred to it. Pursuant to this mandate, members of the Economic Section of the Wage and Hour Division appear before the committees from time to time and present relevant statistical and other economic data. The mere fact that data on a particular matter has not been formally presented to the committee, does not mean that such matter has not been considered by the committee, since the committee, constituted as it is, may be presumed to have expert knowledge of economic matters connected with the industry. At no time does the Administrator or any representative of the Wage and Hour Division urge the committee to fix any particular minimum wage rate.

The subsequent hearing before the Administrator, on the question of whether the recommendations of an industry committee shall be put into effect, affords a full opportunity to interested parties to be heard for or against the proposed minimum wage. This hearing is not for the mere purpose of argument on the record before the industry committee. It is a hearing de novo, in which a new record is made, on the basis of which the Administrator may issue a wage order, and on the basis of which such wage order is subject to review in the Circuit Court of Appeals.

Thus far the Administrator has held hearings on the recommendations of only two industry committees, the hosiery and the textile committees. It may be too early to assume that the procedure which the Administrator has established for the conduct of these hearings will be crystallized as the permanent procedure.

Any interested person desiring to appear at the hearing to offer evidence must file a notice of intention to appear, giving certain information, not later than a designated date prior to the hearing. The Presiding Officer will then notify each person, so indicating his intention to appear, of the day on which and the place at which he may offer evidence. The common law rules of evidence are not controlling. All testimony must be presented under oath or affirmation. Subpoenas requiring the attendance of witnesses or the presentation of documents at the hearing, may be issued by the Administrator in his discretion, and any person may apply in writing for the issuance by the Administrator of a subpoena. Witness fees and mileage must be paid by the party at whose instance the witnesses are summoned. The Presiding Officer may permit any person who has duly entered his appearance to cross examine any witness offered by another person so far as is practicable. The privilege of cross examination was freely accorded in the hosiery hearing, where the number of appearances was not great and where cross examinations appeared to be practicable. In the case of the textile hearing, where hundreds of appearances have been entered, it may be necessary for the Presiding Officer to place some restrictions upon cross examination. The statute does not specifically accord to interested persons the right of cross examination, and it is believed by the Administrator that in this type of proceeding an unrestricted right of cross examination will not be implied as a matter of law. Oral argument may be permitted at the close of the testimony, at the discretion of the Presiding Officer. Any person who has appeared in the proceeding may file a written brief within such time and subject to such limitations and restrictions as may be prescribed at the hearing.

The industry committee is represented at the hearing before the Administrator by its own counsel who opens and closes the proceeding. Under Section 5 of the Act, it is provided that "the Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance." An attorney is accordingly assigned by the Administrator to each industry committee. This attorney sits with the committee, advises the committee on legal questions arising in the course of its deliberations, and if requested by the com-

mittee, assists in formulating its report to the Administrator in support of its recommendations. Since some one should be charged with responsibility, in the hearing before the Administrator, of organizing and presenting the affirmative case in support of the committee's recommendations, it has seemed appropriate that this job should devolve upon the attorney assigned to the committee. Precautions have been taken to assure that this attorney, both in substance as well as in form, acts as counsel for the committee, and not as counsel for the Administrator. In his study of the record and his formulation of the findings after the close of the hearing, the Administrator will be advised by the General Counsel, and by members of the staff of the Opinions Section of the General Counsel's office, none of whom has had any part in the preparation of the industry committee's case in support of its recommendation. Counsel for the industry committee will, of course, not be consulted. The Administrator, who has had nothing to do with the formulation of the industry committee's recommendation or with the development of the case in support of such recommendation, is in a position to give his unbiased judgment on the record made before him.

In the first two hearings on industry committee recommendations, the Administrator personally presided. The experience with the lengthy textile hearing makes evident that consistently with his other duties the Administrator cannot regularly preside at such hearings in the future. He will probably have to adopt the device of appointing a trial examiner to take testimony and to file with the Administrator a report containing findings and recommendations, on the basis of which the Administrator will later hold a hearing for the purpose of argument, before issuing a wage order.

Having recited now the main administrative procedures under the Fair Labor Standards Act, my reportorial task is finished. If there has crept into my manuscript any inadvertent suggestion of approbation for the law and for its sane and competent administration, I here and now repudiate the suggestion, which has no place in the speech I set out to make. There still hovers about me the somewhat wistful ghost of a disembodied general counsel, and I can't quite shake him loose. Perhaps time will cure that.

THE PREPARATION AND TRIAL OF CASES BEFORE THE NATIONAL LABOR RELATIONS BOARD

Broader Significance of National Labor Relations Act Set Forth—Procedure Is Substitute for Employment of Economic Force, Strikes, Boycotts, and the Like in Solving Question of Freedom of Self-Organization and Collective Bargaining—Unfair Labor Practice (Section 10) Cases—Fundamentals of Preparation and Trial Are Those Applicable to the Trial of Any Controversial Issue of Fact and Law—Statutory Procedure Amplified by Rules and Regulations of Board—Orthodox Rules of Evidence not Mandatory—Representation (Section 9) Proceedings Are Materially Different as to Preparation and Trial—Nature of These Cases, etc.*

HON. CHARLES FAHY
General Counsel of the National Labor Relations Board

I HAVE been tempted to go somewhat beyond the strict confines of the subject of our discussion this morning and very briefly to refer to the broader significance of the National Labor Relations Act. A few days ago the venerable and eminent student and apostle of a true course in the solution of our social and economic problems, Monsignor John A. Ryan, said to the Committee on Labor of the House of Representatives that he regarded this statute as the most important legislation enacted, not only for labor but for democracy, since we began enacting federal legislation in this country. Few will dispute the importance of the law; but the significance of Monsignor Ryan's statement is that he was thinking of the importance of its preservation. There is, I believe, hardly a liberal in the country today who disagrees with this general point of view. I use the term "liberal" only as descriptive of one who believes not only in political equality but who also believes that government should endeavor to achieve economic justice through the means available under our Constitution and the constitutions of our states. You will notice that I refer to economic "justice," not economic "security." The latter may well be an incident to the former; but whether or not, justice is the end to be sought. And it must be a justice that reaches through to the mind and spirit and not merely to the wants of the physical being. Nor may economic justice be left to depend solely upon gratuitous motives. We must work toward it as the fulfillment of an obligation. It is founded upon the

*Address delivered at the meeting of the Assembly, Thursday, July 13, in the "Open Forum on Preparation and Presentation of Contested Matters under Labor Relations and Fair Labor Standards Acts."

conception of each man being also a man, like other men in all essential attributes. The National Labor Relations Act contains this quality of justice. Perhaps the somewhat incoherent recognition of that fact makes it at once so controversial and yet so inevitable in America.

This law protects millions of wage earners in America in their right of association and choice of representatives for purposes of collective bargaining, in freedom; that is, free of the interference and coercion exercised by those who hold superior economic power over their daily livelihood and who, if permitted to exercise that superior power as an instrument of such interference and coercion, destroy that freedom. A further significant factor regarding the Act is that to a very considerable degree it is practical. It actually works and in a large measure actually does what it is supposed to do. It succeeds very substantially in righting the wrongs it is intended to right and in mitigating the evils it is designed to ameliorate. Therein also lies one of the reasons for the controversy about it. The unjust exercise of power restrained by the operations of the Act, leaves in the wake of such restraint greater freedom and a more equal balance of power. Once the justice of this extension of freedom and equalizing influence is recognized, the basic problem of the Act in the minds of men who advocate freedom is or should be solved. In the acceptance of this point of view lies, it seems very clearly to me, our principal answer of a peaceful nature to the challenge to the ability of a constitutional democracy to continue to succeed in the face of changing conditions in the world. Such a democracy as ours must not alone preserve political freedom and equality, but through the instruments of government wrought by political freedom and equality, it must seek practical means by which to meet the sense of justice of its people. By so doing as a matter of justice, it also ties the citizen to itself with far stronger and more permanent bonds than the temporary illusion of security afforded by the dictatorships of Communism, Fascism and Naziism.

To the ends of economic justice the National Labor Relations Act makes a real contribution. The growth of its effective operations throughout the country, and the spreading influence of its simple principles serve to modify to a condition of better balance the functioning of management in its relations to the employed, in those industries where this is found necessary. Both management and the employed enjoy greater security as a result. There is neither peace nor security in the end where fundamental rights are denied. This statute protects fundamental rights. The recognition of these rights is the road to successful labor relations if one is but willing to walk the road. Needless to say also the protection by the Federal Government of the right of self-organization and collective bargaining gives rise to the greater responsibility of labor that comes with this greater freedom. It hardly lies however with those who fail to recognize a right to complain of its abuse.

In the details of its methods the functioning of the Act must also be just. It would be paradoxical indeed should a law designed to throw its influence on the scales of economic or abstract justice seek to do this by means themselves unjust. This brings me more closely to the precise topic of this morning's discussion, the preparation and trial of Board cases.

The procedure of the Act, the method it uses to solve the question of freedom of self-organization and of collective bargaining, is a substitute for a previous absence of any means of solution except economic force, the strike, the boycott, and the like. The statute recognized the existence of basic conditions in labor relations requiring improvement. This improvement, this recognition and acceptance of the right of self-organization and collective bargaining, had long been retarded by reason of the fact that it could be achieved to any substantial degree only by economic war between employees and management. The Act furnishes the alternative of an administrative and judicial process. It makes available a peaceful means familiar to an ordered society where previously only strife could either win the rights dealt with by this Act or destroy them. Those who would do away with the new means provided by this Act, or weaken them, in the end would lead us either to destruction of the rights protected or to the winning of them only by economic force when they are denied. To me the choice is a simple one. The way for this country to handle these matters is neither to permit such well-founded rights to lapse or be destroyed nor to leave their existence to depend upon the outcome of economic warfare. The purpose of Board hearings is to avoid such consequences. Our hearings, and the full operations of the Act, are a peaceful and orderly means of solving the problem by a well designed administrative and quasi-judicial process, subject to judicial review in all matters of a justiciable nature. This should have the support of the Bar.

The Preparation and Trial of Unfair Labor Practice (Section 10) Cases

Hearings or trials before the Board fall into two categories, one having to do with unfair labor practices which destroy the rights protected by the Statute, and the other having to do with questions concerning the representation of employees. In the unfair labor practice cases the fundamentals of preparation and trial are those applicable to the trial of any controversial issue of fact and law. Here, as in the trial of cases before courts, the purpose is to develop the truth of matters about which differences have not otherwise been solved. The ascertainment of the truth in all trials perhaps is limited to a conception of truth within the meaning of the applicable law. For example, if a man is accused of murder, his trial necessitates the ascertainment as far as possible of the exact truth as to the facts, but the truth as to whether the man is guilty of murder depends upon the application to those facts of the law of murder. So with Board cases. It is for the Board in the end to determine whether or not what actually occurred and is shown by the record constitutes one of the unfair labor practices condemned by the law, the Board's determination being subject to the review by the courts authorized by the statute. There is however a distinction between these proceedings of the government and much private litigation in that the government is concerned only with effectuating the policy of the statute to encourage the practice and procedure of collective bargaining through freely chosen representatives. Its proceedings are directed only to that end. It has no desire to find a violation of the law unless such has occurred. Its proceedings are neither punitive nor personal. They are remedial and have a public purpose.

The statute provides a clear procedure. This procedure is amplified by the rules and regulations of the Board. Like the rules governing the practice and procedure of courts, Board rules confine the course of

the proceedings to an orderly method of administering justice. The practitioner before the Board must therefore acquaint himself not only with the statute but with our rules and regulations of procedure. These are somewhat detailed but are readily understandable and are adequate. They are now also well-established. Indeed, they have seldom been seriously attacked and in no respect has any of them been held invalid.

The pattern furnished by the statute and the rules and regulations is a rather simple one, as follows: An employee or a group of employees, or a labor organization, who claim that the right to choose a representative for the purpose of collective bargaining, free of the coercion of the employer, has been or is being infringed, may file a sworn charge with the Board. When I speak of the Board here I refer in general terms to the decentralized organization built around the 22 Regional offices. The sworn charge is essential because the Board is not permitted to act *sua sponte* in cases of unfair labor practices.

The Board goes about this phase of its work in a very natural way. When such a charge is filed, it is investigated by agents of the Board attached to the particular Regional office with which the charge is filed. Upon the basis of this investigation about 16% of all charges are dismissed as without merit or as not within the Board's jurisdiction. About 26% in addition are withdrawn by the charging party. These withdrawals usually result from advice by the regional office that the charges are without merit or not within the Board's jurisdiction. So that the very large total of about 42% of all cases are disposed of favorably to the employer in their preliminary stages by dismissal or withdrawal before issuance of a complaint. About 52% additional are settled in this preliminary stage; that is, the matter is adjusted between the Board and the employer in a manner satisfactory to both. These three methods of disposition, that is, dismissals, withdrawals, or adjustments, account for 94% of all cases thus far closed, and we have closed some 17,000 cases. This leaves only about 6% of the cases brought to the Board in which the Board, as a result of the preliminary investigation, considers formal proceedings warranted. These are the cases prepared and tried. The preparation is done in the regional office, except that an occasional case is specially assigned to an attorney attached to the Washington staff. The regional office goes about the preparation of these cases pretty much I am sure as you would do if confronted with a similar problem. Persons who claim to be the victims of the unfair labor practices and other persons having knowledge of pertinent facts are interviewed and statements are obtained. This ground work for the hearing is usually in the hands of employees known as field examiners, acting under the administrative supervision of the regional director and with such advice from the regional legal staff as may be desired. Each case is assigned eventually to an attorney in the regional office working under a regional attorney. The attorney to whom the case is assigned is responsible finally, with the regional attorney, for the adequacy of the preparation of the case, including the drafting of the complaint against the employer. He checks the accuracy and materiality of the facts gathered by the examiner. As any attorney about to try a case should do, he prepares his trial brief.

The "complaint" is issued by the Regional Director, for the Board. A complaint is to our proceedings what a bill of complaint is to equity, or a declaration is to an action at law. It sets forth the basis of the Board's

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HON. CHARLES FAHY

claim of jurisdiction under the commerce power and sufficient facts to advise the respondent-employer of the unfair labor practices he is alleged to have engaged in. These practices may be any one or more of those listed in Section 8 of the statute, such as interference with the right of his employees to form, join or assist a labor organization, interference with the formation or administration of a labor organization or contribution of support thereto; or it may allege discriminatory discharges, for union activity, or discrimination against employees even though not going to the point of discharges; or the complainant may allege a refusal to bargain with or to recognize the union or other representatives that have been selected by a majority of the employees to deal with the management concerning the conditions of employment.

The facts to be proved at the hearing are not only the facts as to the alleged unfair labor practices, but must include the jurisdictional facts necessary to support findings of the Board to sustain its jurisdiction under the commerce power. In the earlier days of the operations of the Act, due to the non-cooperative attitude of a great many employers and their attorneys, these jurisdictional facts were sometimes difficult to obtain. We were obliged to resort to such expedients as subpoenaing the records of railroad and other transportation facilities to prove interstate movements. There has been however a very salutary change in this regard. It is by no means unusual now for the question of jurisdiction to be submitted on the basis of facts contained in a stipulation. Often jurisdiction is not contested; but the record must contain the facts, either in stipulated form or otherwise proved.

The great majority of our contested cases now present no serious jurisdictional problems, because of the series of decisions by the Supreme Court at the last

three terms, in which the governing principles have been clearly stated. These are: *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937) 301 U. S. 1; *National Labor Relations Board v. Fruehauf Trailer Co.*, (1937) 301 U. S. 49; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.* (1937) 301 U. S. 103; *National Labor Relations Board v. Associated Press, et al.* (1937) 301 U. S. 103; *Washington, V. & M. Coach Co. v. National Labor Relations Board*, (1937) 301 U. S. 142; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board* (1938) 303 U. S. 453; *Consolidated Edison Co. v. National Labor Relations Board*, (1938) 305 U. S. 197; *National Labor Relations Board v. Fainblatt, et al.*, (1939) 59 Sup. Ct. 668.

Occasionally there still arises a case which does not fall precisely within the factual situations dealt with by the Supreme Court in these decisions, and differences of opinion persist as to whether the case falls within the principles of the decisions. At the last term two controversies of this character were settled by the Supreme Court (*Consolidated Edison*, and *Fainblatt*, supra.) Since these last two decisions the area of dispute over jurisdiction has considerably narrowed.

Only in a few respects are Board hearings materially different from other trials or hearings. They have the same purpose as all trials. I suppose our hearings have been held in or near each of the communities in which you live. If you have the opportunity to attend one, I hope you will do so. We prefer that they be held in a Federal or other public building; but our hearings go forward in many communities where these preferable facilities are not available and must be housed in some other manner arranged by the Regional Director. The trial examiner assigned to preside over the hearing appears at the time and place designated in the notice of hearing which is served with the complaint. The attorney from the regional office represents the Government and the respondent appears in person or by counsel. Answer is filed to the complaint. Motions are made and ruled on. Witnesses are called, and are examined and cross-examined. The record is preserved verbatim. There may be intervention and the intervenor participates to the extent permitted by the scope of intervention. The most usual intervenor is a labor organization alleged to be a company dominated union. Although such an organization is not a necessary party to the proceeding under the decisions of the Supreme Court, (See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, et al. 303 U. S. 261; and *National Labor Relations Board v. Pacific Greyhound Lines, Inc.* 303 U. S. 272 (1938)), nevertheless it is served with a copy of the complaint and notice of hearing, and may petition to intervene. Such a petition is ordinarily allowed.

The orthodox rules of evidence are by the statute not required to be followed. This is the same situation that pertains to comparable administrative or quasi-judicial agencies such as the Interstate Commerce Commission, Federal Trade Commission, Securities and Exchange Commission, Federal Power Commission, and others. But of course the question of materiality and competence of evidence relied upon is bound dowr. by the due process clause of the Constitution. Further, the principles governing the admissibility and the consideration of evidence by the Board have been clearly stated by the Supreme Court, notably at the last term in *Consolidated Edison Co. et al. v. National Labor Relations Board, et al.*, 305 U. S. 197 (1938) where the Court said:

"The companies urge that the Board received 'remote hearsay' and 'mere rumor.' The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44; *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.* 227 U. S. 88, 93; *United States v. Abilene & Southern Rwy. Co.*, 265 U. S. 274, 288; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 442. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

"Applying these principles, we are unable to conclude that the Board's findings in relation to the matters now under consideration did not have the requisite foundation."

The general trial work of the Board has gone through some evolution since the Fall of 1935. As in all trial work, there have been with us certain variable factors, such as the attitude and experience of the attorneys participating, the attitude and experience of the trial examiners, and the emotional as well as other peculiarities and complexities of one case as compared with another. Some judges are better trial judges than others. So trial examiners may vary. With the constant experience of conducting similar types of hearings under one statute, and the aid that time and experience have afforded not only in the selection of trial examiners but in their work, there is no question that the variations within the staff have moderated and the conduct of hearings has improved. This is also true of the participation of board attorneys, although I must say that some of the very earliest hearings which have stood the test by traveling the full route of litigation through the Courts were conducted with a high degree of excellence. Our most difficult period (referring now to the conduct of Board hearings, and not to Court litigation) was the period following the validation of the statute in April, 1937, when a tremendous mass of work was thrown upon a staff then wholly inadequate. Thousands of charges and petitions were filed. We were under the necessity of expanding as rapidly as possible to avoid being overwhelmed. At the same time we could not eliminate any single one of the essentials of due process or of the procedural requirements of the statute or of our rules. Many cases were handled by men then new to the work and under pressure. Some of our trial work inevitably suffered. The average calibre is higher now than it was then, and even during the incredible pressure of mere volume which followed April, 1937, the trial work of that period held up well under subsequent scrutiny of the Courts. This was due to the work of the attorneys of the Board in the regional offices throughout the country, and is as well reassuring to those involved in Board cases. We have been able to review and check our trial work and to improve it perhaps more rapidly than have attorneys appearing for respondents in Board cases, due not only to central supervision afforded by the nature of the organization, but to the availability to all our attorneys of our general reservoir of ex-

perience. All records made in the hearings are reviewed and the conduct of each hearing is criticized on the basis of such review, as far as we are responsible for the manner of its conduct. We seem now also to have passed through the period of flagrant obstructive tactics engaged in by attorneys practicing before the Board. The ingenuity and skill with which obstructive tactics were developed in some of our hearings reached a high mark of inferior professional conduct, particularly as these gentlemen of the bar knew that our trial examiners had no power to hold them in contempt. The bar, in the performance of its duties in representing parties before an agency of government will, if true to the finer obligations of the profession, heed its own clear responsibility to aid in the orderly conduct of this branch of the administration of justice; and this it is doing now on a generally higher plane than the average performance in Board hearings in the years that have passed. Board hearings have increasingly taken on all of the forms, as well as the substance of well-conducted, workmanlike segments in the whole of our administration of justice under law.

Representation (Section 9) Proceedings

The preparation and trial of these cases is materially different from those involving unfair labor practices, both as to subject matter and technique. Representation or Section 9 proceedings are not against employers, although the employer is made a party with the right of participation. These proceedings are inquiries into the question of whether or not a majority of the employees in an appropriate collective bargaining unit have designated or selected bargaining representatives. If so, such representatives are entitled under the statute to engage in collective bargaining with the employer on behalf of all employees in the unit, and the employer may not validly refuse to recognize such representatives for that purpose. These proceedings arise on a petition, as distinct from a charge. The petition is one for an investigation and hearing concerning the question of representation alleged to have arisen. Under Section 9, if it appears that such a question has arisen, the Board is authorized to conduct an investigation and in connection therewith to hold a hearing. Here as in Section 10 proceedings there must also be jurisdiction under the commerce power over the enterprise in which the question is alleged to have arisen. When the Board decides to hold a hearing to resolve a question concerning representation, it gives notice to the employer, to the petitioner (which is usually a labor organization) and to all other known organizations or groups in the plant claiming to represent any employees. As in the case of unfair labor practices, a trial examiner is designated to preside over the hearing. The nature of these proceedings, however, is not adversary to the employer.

The duty of the Board's attorney is to prove the jurisdictional facts on the record, and to give a guiding hand to the proceedings; that is, to aid toward developing the essential facts if the parties omit to do so, such facts as go to the number of employees, the nature of their work, their supervisory or non-supervisory capacities, the existence of outstanding contracts, the inter-relation of the work of the employees, and all such matters as throw light on the conditions within the plant or plants bearing on the bargaining unit. But he is the advocate of no position where there is a conflict between the parties as to the appropriate unit or the question of majority. He merely aids in placing upon the record sufficient information bearing on these questions to enable the Board to reach an intelligent decision on the record. The conflicting claimants on the question of appropriate unit and majority present their own claims by evidence adduced by them.

When there is no contest as to the unit, which is often the case, or even where there is a contest but a determination is once made as to the unit, so that the eligibility of those entitled to participate in designating or selecting the representatives is known, there remains only the rather simple matter of resolving the question of majority designation by those eligible to make such designation. Competent evidence to that end includes membership in a union, or a signed instrument of designation, or employees may take the stand and testify as to their selection. Union records, properly proved, are also evidence on the point. The trustworthiness of any evidence is subject of course to challenge by the employer or by a rival union party to the proceedings. If the proof as to the designation by a majority is left in doubt on the record made at the hearing, or if for any other reason the Board in the exercise of a sound discretion deems an election wise in order to effectuate the policies of the Act, it directs that the question concerning representation be resolved by an election by secret ballot held under its supervision and control. The statute expressly authorizes this to be done. The Board has held more than 2,000 elections, either by its direction or on the consent of the parties. More than 600,000 ballots have been cast. Employee participation in these elections is approximately 90% of those eligible, much higher than the participation in municipal, state, Congressional or Presidential elections. Sometimes a protest of an election is filed, but this seldom occurs, and I think it may be said that the skill and integrity of these secret ballots is universally recognized and that they constitute one of the very great achievements of the statute along the road to a peaceful solution of industrial controversies.

The principal source of dispute before the Board in representation cases arises over the bargaining unit, and not over the question of majority within the unit. On this point the craft unit for example conflicts at times with the larger unit, and thus the A. F. of L.-C. I. O. conflict is laid before the Board for decision. In these cases the Board attorney has no prosecuting or adversary function whatever. None of these representation cases result in an order or command against anyone. The Board merely makes a determination as to the appropriate unit and as to majority designation of representatives or lack of such designation.

While the decision of the Board on the unit, based on the record made at the hearing, entails the exercise of judgment, as distinct from a mere calculation of some sort, the determination is nevertheless not an order. It is a determination that such and such a unit is appropriate, and that such and such a union or other representatives have or have not a majority in that unit. If there is no majority in the unit, the petition is dismissed. If there is a majority a certification to that effect is made.

There is much that I have omitted, but I may not subtract more of your time from that allotted to the general discussion to follow.

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perience. All records made in the hearings are reviewed and the conduct of each hearing is criticized on the basis of such review, as far as we are responsible for the manner of its conduct. We seem now also to have passed through the period of flagrant obstructive tactics engaged in by attorneys practicing before the Board. The ingenuity and skill with which obstructive tactics were developed in some of our hearings reached a high mark of inferior professional conduct, particularly as these gentlemen of the bar knew that our trial examiners had no power to hold them in contempt. The bar, in the performance of its duties in representing parties before an agency of government will, if true to the finer obligations of the profession, heed its own clear responsibility to aid in the orderly conduct of this branch of the administration of justice; and this it is doing now on a generally higher plane than the average performance in Board hearings in the years that have passed. Board hearings have increasingly taken on all of the forms, as well as the substance of well-conducted, workmanlike segments in the whole of our administration of justice under law.

Representation (Section 9) Proceedings

The preparation and trial of these cases is materially different from those involving unfair labor practices, both as to subject matter and technique. Representation or Section 9 proceedings are not against employers, although the employer is made a party with the right of participation. These proceedings are inquiries into the question of whether or not a majority of the employees in an appropriate collective bargaining unit have designated or selected bargaining representatives. If so, such representatives are entitled under the statute to engage in collective bargaining with the employer on behalf of all employees in the unit, and the employer may not validly refuse to recognize such representatives for that purpose. These proceedings arise on a petition, as distinct from a charge. The petition is one for an investigation and hearing concerning the question of representation alleged to have arisen. Under Section 9, if it appears that such a question has arisen, the Board is authorized to conduct an investigation and in connection therewith to hold a hearing. Here as in Section 10 proceedings there must also be jurisdiction under the commerce power over the enterprise in which the question is alleged to have arisen. When the Board decides to hold a hearing to resolve a question concerning representation, it gives notice to the employer, to the petitioner (which is usually a labor organization) and to all other known organizations or groups in the plant claiming to represent any employees. As in the case of unfair labor practices, a trial examiner is designated to preside over the hearing. The nature of these proceedings, however, is not adversary to the employer.

The duty of the Board's attorney is to prove the jurisdictional facts on the record, and to give a guiding hand to the proceedings; that is, to aid toward developing the essential facts if the parties omit to do so, such facts as go to the number of employees, the nature of their work, their supervisory or non-supervisory capacities, the existence of outstanding contracts, the inter-relation of the work of the employees, and all such matters as throw light on the conditions within the plant or plants bearing on the bargaining unit. But he is the advocate of no position where there is a conflict between the parties as to the appropriate unit or the question of majority. He merely aids in placing upon the record sufficient information bearing on these questions to enable the Board to reach an intelligent decision on the record. The conflicting claimants on the question of appropriate unit and majority present their own claims by evidence adduced by them.

When there is no contest as to the unit, which is often the case, or even where there is a contest but a determination is once made as to the unit, so that the eligibility of those entitled to participate in designating or selecting the representatives is known, there remains only the rather simple matter of resolving the question of majority designation by those eligible to make such designation. Competent evidence to that end includes membership in a union, or a signed instrument of designation, or employees may take the stand and testify as to their selection. Union records, properly proved, are also evidence on the point. The trustworthiness of any evidence is subject of course to challenge by the employer or by a rival union party to the proceedings. If the proof as to the designation by a majority is left in doubt on the record made at the hearing, or if for any other reason the Board in the exercise of a sound discretion deems an election wise in order to effectuate the policies of the Act, it directs that the question concerning representation be resolved by an election by secret ballot held under its supervision and control. The statute expressly authorizes this to be done. The Board has held more than 2,000 elections, either by its direction or on the consent of the parties. More than 600,000 ballots have been cast. Employee participation in these elections is approximately 90% of those eligible, much higher than the participation in municipal, state, Congressional or Presidential elections. Sometimes a protest of an election is filed, but this seldom occurs, and I think it may be said that the skill and integrity of these secret ballots is universally recognized and that they constitute one of the very great achievements of the statute along the road to a peaceful solution of industrial controversies.

The principal source of dispute before the Board in representation cases arises over the bargaining unit, and not over the question of majority within the unit. On this point the craft unit for example conflicts at times with the larger unit, and thus the A. F. of L.-C. I. O. conflict is laid before the Board for decision. In these cases the Board attorney has no prosecuting or adversary function whatever. None of these representation cases result in an order or command against anyone. The Board merely makes a determination as to the appropriate unit and as to majority designation of representatives or lack of such designation.

While the decision of the Board on the unit, based on the record made at the hearing, entails the exercise of judgment, as distinct from a mere calculation of some sort, the determination is nevertheless not an order. It is a determination that such and such a unit is appropriate, and that such and such a union or other representatives have or have not a majority in that unit. If there is no majority in the unit, the petition is dismissed. If there is a majority a certification to that effect is made.

There is much that I have omitted, but I may not subtract more of your time from that allotted to the general discussion to follow.

EDGAR B. TOLMAN AWARDED ASSOCIATION MEDAL FOR 1939

THE American Bar Association Medal for 1939 was awarded to Edgar Bronson Tolman, of Illinois, at the Third Session of the Assembly. Announcement by President Hogan of his selection for this signal honor was greeted with great applause. The award was made by Mr. Walter P. Armstrong, of Tennessee, who has served for many years as a member of the Board of Editors of the JOURNAL. Major Tolman made a brief reply in accepting the honor, declaring that he received it as a "Service Medal, which will carry with it the obligation to serve the profession and its National organization with faithfulness and loyalty during all the remainder of my days." President Hogan then said a few words emphasizing the Association's realization of Major Tolman's outstanding work for the advancement of jurisprudence and the profession's deep appreciation of his services.

The presentation address, Major Tolman's response, and President Hogan's remarks are as follows:

MR. ARMSTRONG'S ADDRESS

In executing the delightful assignment of making this presentation, I shall mention only a few of the many facets of the varied and distinguished career of the versatile recipient.

Lawyer. Realistic and successful. For more years than most of us remember, he has had the responsibility of matters of grave concern. During his long career he has never subordinated his own fine sense of justice. His record is one of unfailing faithfulness to public as well as private trusts. He has composed differences whenever possible, but he has not hesitated to have recourse to the courts for the assertion of what he conceived to be the right when that seemed necessary. The city of Chicago is under lasting obligation to him for his work as corporation counsel, especially for his splendid victory on her behalf in the Supreme Court of the United States, as a result of which she was enabled to take the first great step toward the unification of her surface traction lines.

Sportsman. Had he so chosen, he could have filled his all too scanty leisure with the recreations he has always loved. When in these hours he has laid aside gun, rod and golf club, it has been because he has heeded the call for service. All who have known him have found in him that unfailing sense of fair play which is characteristic of the true sportsman.

Farmer. Mirabile dictu. A successful lawyer is a successful farmer. Amid the multitude of his other vocations and avocations he has found time profitably to direct large farming operations and to introduce modern methods of agriculture and animal husbandry.

Soldier. Twice he has donned his country's uniform. He was in combat at Santiago and after the surrender of that city he was honored with command of the guard of the captured Spanish army. During the World War he performed successfully the difficult task of administering the Selective Service Act in Illinois. The title by which he is affectionately known was earned by merit and confirmed in the field, not bestowed by courtesy. That we do not more frequently salute him by the higher and more formal title to which he is really entitled—Colonel Tolman, D. S. M.—is only because he has so long been enshrined in our hearts as "the Major." When he laid aside the uniform much of the soldier remained for he seems always to march to the inward strains of martial music and to be ever alert to the call of the great captain, Duty.

Jurisprudent. He is a living refutation of the charge that the vocation of the law demands that one must prostitute one's talents in the petty bickerings of others. Some time President of the Chicago and of the Illinois State Bar Associations; editor of the AMERICAN BAR ASSOCIATION JOURNAL for almost twenty years, he has made the JOURNAL not only the authentic and eloquent voice of the Association but, to a measurable extent, the voice of the entire bar of the United States; fifteen years—almost from its inception—a member of the Council of the American Law Institute; special assistant to the Attorney General to lay the groundwork for the new Federal Rules of Civil Procedure and Secretary of the Supreme Court Advisory Committee that was charged with the duty of formulating those rules and submitting them first to the bar for criticism and suggestions and then to the Court for consideration, few records can equal or even approach his in the contribution made to the cause of American jurisprudence in this century. He began to work for the simplification of procedure when most of us were children. The Federal Rules of Civil Procedure will probably be remembered as the most significant law reform of our time. Perfectly qualified, from the beginning, he devoted practically all of his time for several years to the work. His intelligent efforts contributed in no small measure to their formulation, promulgation and success. All of which he saw, a part of which he was.

Major Tolman: (Through force of long habit thus I address you) The American Bar Association believes that the Association, your profession and your country all would have been the poorer without your unselfish and unflagging devotion to their best interests. In Baconian phrase, you have mixed modesty with greatness. You have met the test of Terence. You have gently borne with and endured all men. You have given of your time and talents without stint and without the expectation of reward. With measured words, whose only emphasis was the emphasis of truth, you have spoken with effect for many worth while causes. For them you have written with a purity of diction, a felicity of style and a soundness of reason that have carried conviction to your readers. You have been calm and courteous in conference, wise and firm in counsel. Suaviter in modo, fortiter in re. For half a century or more you have been engaged in vindicating the truth of Thomas Jefferson's saying that the "study of the law qualifies a man to be useful to himself, to his neighbors and to the public." For conspicuous service in time of war, your country has decorated you with its Distinguished Service Medal. I am authorized by this Association now to confer upon you the American Bar Association Medal for conspicuous service to the cause of American jurisprudence. Sir, in honoring you, the American Bar Association honors itself.

Edgar B. Tolman Awarded American Bar Association Medal

MAJOR TOLMAN'S RESPONSE

MR. PRESIDENT, MR. ARMSTRONG, LADIES AND GENTLEMEN OF THE AMERICAN BAR ASSOCIATION:

The modesty which Mr. Armstrong extols, compels me to declare that his kind and friendly tribute is generous beyond my deserts.

Reference has been made to the work of the Advisory Committee appointed by the Supreme Court of the United States to aid the court by taking counsel with the bench and bar of the federal district courts and then drafting and presenting to the court for its consideration rules of procedure for all the district courts.

There were fifteen members of that committee. The distinguished chairman, vice-chairman and reporter are entitled to priority of mention before me, and every member did his full share of the work.

Nearly 5,000 members of the bench and bar par-

ticipated directly or indirectly in bringing about the final result.

Credit should be given to the Attorney General whose persistent efforts persuaded Congress to pass the enabling act, to the members of Congress who forwarded its enactment, and most of all to the members of the Supreme Court of the United States who promulgated the rules as finally revised.

Thus far you will observe that no names have been mentioned but the time and place make it appropriate to name one man, a former member of the Supreme Court of California, a distinguished member of the bar of this state, who contributed greatly to the work and whose recent and untimely demise has terminated a life useful to his community and to his profession,—Warren Olney, Junior.

Mention has also been made of my long service on the Board of Editors of the AMERICAN BAR ASSOCIATION JOURNAL. Here also I am but one of eight,—and here also the JOURNAL could not survive without the active support of the bar of the country. While I acknowledge my indebtedness to the distinguished men who through the years have been associated with me on the Board of Editors, I must acknowledge the great debt we all owe to one man whose peculiar combination of talents has made him seem indispensably useful, a lawyer and a journalist who has served from the beginning as our Managing Editor, Mr. Joseph R. Taylor.

And now, if I may be permitted to interpret the award of the American Bar Association Medal as given not for personal merit but as recognition of willingness at all times to do my part, I accept it as a Service Medal, which shall carry with it the obligation to serve my profession and its national organization with faithfulness and loyalty during all the remainder of my days.

PRESIDENT HOGAN'S TRIBUTE

After the applause had subsided, President Hogan said:

"Major Tolman has said, and truly, that the members of the Supreme Court Advisory Committee, the Court that finally promulgated the Rules that marked the greatest step in the reform of procedure in the administration of justice, the Congress that authorized, after we had requested it for over twenty years, the power in the Court to make those Rules, the lawyers who offered suggestions to the Committee, a vast number of persons who did a great amount of work, all contributed to that end, which we who have given it consideration think will do more than anything that has been done in a century and a half, to do away with the age-long complaint against the law's delay.

"But while we join with Major Tolman in his tribute to those who contributed, and recognize the fineness of spirit and characteristic modesty that made him pay that tribute, we in what you call the seats of authority, Major, of the American Bar Association, after careful investigation know the one man who contributed most to that great result, and we are happy tonight that that one man has the medal of the American Bar Association. (Applause)

"It was splendid to listen to the Major, again with characteristic modesty and fine fairness, tell us of many who have contributed to the success, and what is more than success in this field, and to the usefulness, of the AMERICAN BAR ASSOCIATION JOURNAL; but once again we (and Mr. Armstrong and I have both served upon the JOURNAL Board, as has Mr. Gay also) who have worked on the inside and shared with the rest of you the profit and benefit of that monthly contribution to the learning of law, know the name of the man who has made the AMERICAN BAR ASSOCIATION JOURNAL the great periodical that it is; and that man—I spare his modesty and I refrain from mentioning names—is the man who tonight received the gold medal from the American Bar Association." (Applause.)

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Walter P. Armstrong, a former member of the Executive Committee of this Association, a former President of the State Bar Association of Tennessee, of Memphis, Tennessee."

Mr. Armstrong then presented the medal and read the citation. Mr. Armstrong's remarks, with Major Tolman's response and President Hogan's further comments on the award, are printed in full in another part of this issue.

Award of Merit to State and Local Bar Associations

Next on the program was an entirely new feature. "At the Cleveland meeting of this Association," President Hogan said, "a resolution was adopted providing for making an annual award of merit to the State Bar Association which has performed the most outstanding and constructive work during the year and a similar award to the local Bar Association which in its field has done the most outstanding and constructive work. Under rules approved by your House of Delegates, a Committee was created to make the annual selection of the State and local Bar Association entitled to receive this year's award of merit. No better work has been done during our Association year than that done by the Section on Bar Association Activities, which steadily, progressively, and surely is bringing together, combining and coordinating the efforts of the organized Bar in States, counties, cities, and towns and those of this National organization of ours."

Mr. Morris B. Mitchell, Chairman of the Committee on Award of Merit, then gave the following report from his Committee:

REPORT OF COMMITTEE ON AWARD

In response to the notice sent to State and local Bar Associations, a substantial number of applications for the 1939 Award of Merit have been received by your Committee. Each of these applications sets forth the outstanding and constructive work rendered by some particular State or local Bar Association during the past year.

The accounts of the work of these Associations is truly inspiring. They show definitely that the Bar Associations of this country are on the march. The grave problems confronting our profession and our country today have caused lawyers throughout the length and breadth of the land to devote a substantial amount of their time and attention to united efforts to solve these problems through the medium of their State and local Bar Associations.

Your Committee has carefully considered each of these many applications. We could easily spend the entire morning telling of the fine work done by these Bar Associations during the past year. Of course, time does not permit of any such recital, but before making the Awards we do want to call attention to a few of the outstanding accomplishments of some of

these Associations, in the hope that other Associations will be stimulated to attempt similar projects. We cite the following Bar Association activities as deserving of especial commendation:

The State Bar of California:—For their employment of an experienced full-time Public Relations and Publicity Representative, who sent out dispatches each week to 400 Pacific Coast newspapers, resulting in many news articles and editorials favorable to the legal profession.

State Bar Association of Connecticut:—For their adoption of uniform standards of practice in connection with examination of titles, thus eliminating disputes and creating definite standards as to what constitutes a marketable title.

Missouri Bar Association:—For conducting Law Institutes in the rural districts, and for sponsoring, through their junior members, a Small Loans Bill which was passed by the Missouri Legislature.

Washington State Bar Association:—For employing a full-time legislative representative who assisted the Legislators in drafting bills and amendments and advising them on rules and procedure, thereby creating good will towards the Bar Association which resulted in sympathetic consideration of the Association's recommendations on pending legislation.

Bar Association of Baltimore City:—For conducting an extensive investigation of the People's Court, a small debtor court of Baltimore, and recommending certain improvements therein; and for conducting a well-rounded program through which they battled on all fronts for better administration of justice.

Bar Association of the City of Boston:—For conducting the best organized Law Institutes for post-law-school education given in any large city.

Bar Association of Greensboro, North Carolina:—For conducting, through their junior members, an exceptionally efficient legal aid service for the poor.

Los Angeles Bar Association:—For pioneer work in organizing the first Junior Bar Section of a local Bar Association, which section now has 275 members and is doing effective work.

Oakland County Bar Association of Pontiac, Michigan:—For public relations work in conducting debates by its members for the purpose of educating the public on controversial local governmental issues, both sides of the question being presented impartially in such debates.

Bar Association of St. Louis:—For its investigation and fearless report on conditions in the St. Louis Circuit Court, which had been subjected to criticism by the press, and for its well rounded program of activity.

Your Committee feels that every one of these Associations is deserving of an Award of Merit, but unfortunately we are only authorized to present an Award to one State and one local Association.

After careful consideration we have unanimously decided that our *State* Bar Association Award should go to the State Bar of South Dakota for its exceptional and outstanding work in securing the passage of legislation authorizing a complete revision of the South Dakota Code, and thereafter, through its Committees, doing much of the work and bearing a substantial part of the cost of such revision; and for its further outstanding work in securing the passage of a law conferring rule-making power on the South Dakota Supreme Court and in assisting in the preparation of such rules. In recognition of this outstanding and constructive work by a numerically small Bar, your Committee is pleased to present the 1939 State Bar Association Award of Merit to Mr. Roy E. Willy, as President of the State Bar of South Dakota.

ROY E. WILLY
President, State Bar of South Dakota

We have also unanimously decided that our *Local* Bar Association Award of Merit should go to the Bar Association of Dallas, Texas, for a truly remarkable program of achievement covering a long period of years. The Dallas Association has engaged in so many outstanding and noteworthy activities that it is difficult to single out any one of them for special attention. Their record is summarized in the December, 1938, issue of the American Judicature Society Journal. Probably their finest accomplishment lies in securing more than 1000 out of 1100 lawyers in Dallas as members of their Association. Their numerous activities include weekly legal institutes or clinics, a successful campaign against loan sharks, the establishment of a Court of Domestic Relations, a free legal-aid bureau, weekly radio broadcasts, maintenance of an office at the Court House with a full-time secretary, maintenance of a Law Library, exceptional Grievance Committee work and work in raising standards of admission, work in increasing the membership of the Texas State Bar Association and the American Bar Association, and publication of a unique year book entitled "The Dallas Bar Speaks." In recognition of this unusual and outstanding work, our Committee is pleased to present the 1939 Local Bar Association Award of Merit to Mr. J. Glenn Turner as President of the Bar Association of Dallas.

At the conclusion of the report, Chairman Mitchell then presented the certificate to Mr. Roy E. Willy,

President of the State Bar of South Dakota, and a certificate to Mr. Glenn J. Turner, President of the Dallas (Texas) Bar Association, who received them on behalf of their respective organizations.

Message From Across the Seas

President Hogan read a cablegram from two former guests of the Association.

"A year ago, when we met for our Wednesday night meeting in Cleveland," he said, "from London came a member of the House of Lords, accompanied by Lady McMillan, to be one of our outstanding guests. Lord McMillan charmed every one of us who had the privilege of hearing him. Today by cable there comes from London, across the Atlantic, whence we could get no member of the judiciary to come this year on account of troublous world affairs, this greeting from them to all of us:

"'Remembering our happy visit of 1938, we send every good wish for the success of this year's meeting of the great American Bar Association across the sea.'

"This year and during all the years now for a decade past, we have been honored by having with us a representative of our brother Association across the unseen geographical line that divides Canada from the United States. Tonight we have as representative of the Canadian Bar Association a King's counsel, a great leader of the Bar of Canada, a member of and leader of his Majesty's opposition in the legislature of British Columbia, and it is my pleasure to present to you Mr. R. L. Maitland."

Address by Senator James F. Byrnes

"If any of us," said President Hogan, "particularly those of you who have had the duty of presiding over a meeting of this kind, were called upon to present to an audience the one man in all the world you had known longer than anyone else, the one man in all the world with whom you have lived in closest relationship, you would face the embarrassment which momentarily is mine.

Gittings

J. GLENN TURNER
President, Dallas Bar Association

"The American Bar Association, as I had occasion to say at the Kansas City meeting two years ago, is composed of lawyers from the East and the West, the North and the South, from every part of the nation—lawyers of all political parties and all sorts of religious creeds and beliefs. Lawyers holding all sorts of views on all sorts of questions will find in this organization a forum for expression of their views, whatever they are, and as a presiding officer I have had occasion to note they often insist upon expressing them.

"Tonight the American Bar Association has invited as its principal speaker of this meeting one who, it is suspected, entertains at least some views not altogether or 100 per cent in accord with those sometimes voiced by your President. (Laughter). But in extending that invitation with the knowledge of what might be a difference in views, the Board of Governors of the American Bar Association has invited a guest speaker who has made his mark already on the history of the country.

"Entering the House of Representatives of the Congress of the United States as a baby member just six months past the constitutional limit of age, serving for seven terms in that body, returning to the practice of his profession in the State of South Carolina, and becoming one of the most successful, at the same time most useful of the Bar of that great and one of the original States of the Union, he came back to public life to enter, about eight years ago, the Senate of the United States; and I believe I can say without exaggeration that more quickly than any other man who ever entered that body, he sprang into a position of recognized leadership. Returned again by the overwhelming vote of the people of his small but very great State, he has now, in his second term in the United States Senate, written his name large on the role of leadership and of modern American statesmanship.

"I have the real honor of presenting to you to address you on the subject of 'The Constitution and the Will of the People,' the junior Senator in the Senate of the United States from the State of South Carolina, James Francis Byrnes."

Senator Byrnes' Prefatory Remarks

The audience arose and applauded the speaker, who prefaced his address as follows:

"For a moment I was quite embarrassed. I am grateful to your President for his generous statements. I am even more grateful to him for not saying many things he could have said. I can only promise him that if I ever have an opportunity to introduce him I will try to repay him for his generosity. I could never do it with his eloquence, but I promise to do it with equal disregard of the truth. (Laughter.)

"When he was kind enough to extend to me on behalf of the Association the invitation to be with you at this convention, he invited me to speak at the banquet tomorrow evening. Later he advised me that I was to speak Wednesday night instead of Thursday night. I do not know even now the reason for that change of mind, but to those of you who heard him speak on Monday morning about changes of mind I simply wish to say that when your President suffers a change of mind it does not make for stability. It

makes for instability. (Laughter). It makes for uncertainty instead of certainty.

"He cautioned me, too, that I should be serious. Possibly that accounted for the change. He was afraid that if I went to a banquet of lawyers and made a dry speech, the speech would be the only thing there that would be dry. (Laughter)

"He cautioned me, too, not to speak more than forty minutes. I want to promise you I am not going to talk that long. His caution to me on that score was due to the story I have told him of the Populist in North Carolina who, on one occasion having an opportunity to speak to as many as one hundred farmers, had spoken for approximately two hours, when he announced that he was now approaching the serious part of his message. As one man started to leave, the Populist speaker said, 'I regret exceedingly that I have no watch and there is no clock in this courthouse.'

"An old fellow got up in front and said, 'Well, I hope to goodness you can see that calendar which is behind you.' (Laughter)

"I will not consume the forty minutes allotted to me by your President. I speak to you on 'The Constitution and the Will of the People.'"

Senator Byrnes' address was received with close attention and was liberally applauded. It is published in full elsewhere in this issue.

The Association's Appreciation Is Expressed to Senator Byrnes

President Hogan expressed the Association's appreciation of the address of the distinguished speaker. He said:

"Senator Byrnes, the members of the American Bar Association assembled in San Francisco are grateful to you not only for your contribution and for your thought-provoking address at this convention, but for having left your place in the Senate, as I know, only last night to address us tonight.

"I think if Senator Byrnes had known that it was just one year ago that the American Bar Association went on record militantly for recognition of the sacred guarantees of the Bill of Rights, he would have understood why it was that the three last States in the Union which had not ratified the Bill of Rights hurried this year to send the ratification to the Senate of the United States. (Laughter). He would also have understood that during this year, for the first time in history of the government, because of that action of this Association, the Department of Justice woke up and created a Civil Liberties Unit in that great department.

"You have listened tonight," he continued, "after having heard a few days ago from another voice, to the statement that a non-constitutional method had been resorted to for amending the Constitution. You have heard from a high authority in government what, ladies, your lawyer escorts will tell you, despite the new system of pleading, is a plea of confession and avoidance. (Applause). But you will also recall, when you compare in reading what these two voices have given to you orally this week, that two speakers on your program agreed to this, that it is to the American people, sensibly acting in the choice of the legislative branch of the government, that those people must look now, as the Senator says now and as I said Monday, for protection of the liberties guaranteed by our Constitution.

"Now I happen to know that a number of you on an official occasion this week have listened to another great representative of our government. I think you would like to meet him by a formal introduction. The most personable, most pleasant, one of the most erudite and plausible, spreaders of legal error that the United States has ever had, the Solicitor General of the United States, Robert H. Jackson." (Applause)

Fourth Session of Assembly Further Considers Recommendations of Committee on Work of Sections and Committees—Chairman Clark Makes Statement as to Plans of Committee on Bill of Rights—Carnegie Corporation Makes Grant to Aid Committee's Work—Open Forum on Labor Law Administration Problems

CONSIDERATION of the report of the Survey Committee was continued by the Assembly at its fourth session. Some of its recommendations were adopted; others were withdrawn. The Assembly refused to discontinue the Committee on Securities Laws and Regulations, on the ground that its work did not belong in the Section of Commercial Law. The Survey Committee was itself discharged, on its own recommendation, with thanks for its work. Chairman Grenville Clark made a vital statement for the Bill of Rights Committee. As the Assembly was nearly a day behind on its heavy calendar, the Assembly sessions were at this point divided, between an open forum on the Bill of Rights and a continuation of the calendared session. Both were well attended and interesting. Eight Delegates from the Assembly to the House of Delegates were elected by ballot. The Ross Essay Prize of $3,000 was presented to Malcolm McDermott, who gave a brilliant summary of his winning essay, after which the 1940 subject was announced. An open forum on labor laws was conducted in charge of the Committee on Labor, Employment and Social Security. Judge Magruder discussed the Fair Labor Standards Act of 1938 and Charles Fahy the National Labor Relations Act, from the point of view of the preparation and trial of cases under those laws. Unfortunately, time did not permit discussion and questions as to these useful talks.

THE Assembly on reconvening for its fourth session resumed consideration of the report of the Special Committee on Survey of Sections and Committees.

The next recommendation of that Committee, which was concurred in by the Board of Governors, was

Lee Brothers

MORRIS B. MITCHELL
Who Presented Awards to Bar Associations

that the Committee on Amendments and Legislation Relating to Child Labor be discharged. A motion to that effect was carried.

The recommendation for the discharge of the Committee on Cooperation between Press, Radio and Bar was next taken up. Chairman Stinchfield was recognized. He stated that it seemed to the Chairman of the Committee on Survey that the issue with reference to the remaining Committees, as to which there was a difference of opinion between the Committee and the Board of Governors, had been fairly drawn and settled in the proceedings yesterday. "There is not an adequate difference," he said, "in the reasons offered by the Committee on Survey for disposing of the other Committees and for disposing of the Committees as to which you did not agree with us yesterday to make it fair to the remaining Committees that they should be put to the burden of argument. Therefore, the Chairman of the Committee on Survey will withdraw its recommendations as to disposing of the Committee on Cooperation between the Press, Radio and Bar (including the oral argument between the Survey Committee and the Chairman of that Committee), the Committee on the Economic Condition of the Bar, the Committee on Judicial Salaries, and the Committee on Judicial Selection and Tenure. . . ."

Chairman Stinchfield thereupon withdrew the motion heretofore made to discharge the above Committees, but moved to discharge, in addition to those already discharged by vote of the Assembly, the Committee on Proposals Affecting the Supreme Court and other Courts of the United States, the Committee on Securities Laws and Regulations, the Committee on the Sesquicentennial Celebration, and the Survey Committee.

President Hogan, in response to a question from the floor, announced the vote would be taken separately on the proposal to discontinue each Committee. The Assembly thereupon voted to discharge the Committee on the Supreme Court, and the Committee on the Sesquicentennial Celebration.

Committee on Securities Laws and Regulations Discussed

The proposal to discharge the Special Committee on Securities Laws and Regulations was then taken up. Mr. William L. Ransom, of New York, opposed the recommendation. "This is a proposal," he said, "to take out of the structure of this Association a Committee which deals with a subject of increasing importance to the profession and the public, and which is a rather specialized field. If this Committee on Securities Laws and Regulations is discharged, it means virtually that we surrender in behalf of the profession any relationship to the law and the development of the law and the regulations in that field. If this Committee is discharged, I don't know where such functions could be suitably vested. Certainly not in the new Section of Commercial Law, because somehow from experience I don't recognize much kinship between bankruptcy law and the law of security regulation under the SEC Act and the regulations of the Commission."

The Association, he added, has had a Committee in this field which has done excellent work. It is headed by a distinguished lawyer and former teacher of the law, Judge Burns, who was the very able counsel of the Securities and Exchange Commission, and is now in general practice. He thought every lawyer dealing with corporate matters in the field of finance and securities realized that what with the various proposals for new acts as to corporate indentures and investment trusts, and the like, the various regulations and revisions of regulations which are from time to time put out by the Commission, there is a need for the representation of the organized Bar of the country in this field. He sincerely hoped that the Assembly would not take the action proposed.

President Hogan announced that while the Board of Governors joined with the Committee in recommending the discharge of the Special Committee on Securities Laws and Regulations, he desired for the moment to step aside, theoretically at least, from the Chair and to address the Assembly as one of its members in opposition to the recommendation.

"I concur with what Judge Ransom has said," he continued, "without repeating it. This, just as aeronautical law, is in a new and a vitally important field. The Federal Government has taken over to the last degree the regulation of the issuance of securities, the regulation to the point of prohibition. Every business, every industry, everything in our nation that needs financing is now subject—and I am not attacking anything in this connection, we have a condition not a theory—to iron-bound Federal regulation.

"The Securities and Exchange Commission recognizes that great care and study must be given to the law. It must be amended. Not only must the law be amended as time and experience show the necessity for that amendment, but the regulations of the Securities and Exchange Commission itself are in a condition of flux. They need constant changing and amendment,

and for this Association at the very threshold of this new field in Federal regulation, by the discharge of its Committee and the burying, in effect, in a very large Section devoted to do many other things of attention to this important matter, would be taking a step backward. It would be doing more than that, my fellow members. It would be practically saying that the Association has lost interest after setting up this Committee in this vital, important, new field. And so, speaking to you as a member, not as the Chair, I trust you will vote down this motion."

Mr. Haywood Scott, of Missouri, spoke in favor of the recommendation. He was a member of the new Section on the Law of Commerce, and at its session in San Francisco the subject of securities laws and regulations had been taken up and discussed on its program. The Section had been given the right to consider this very matter and he saw no reason for continuing the Committee for the identical purpose. The Committee on Survey had studied the question very carefully and he trusted that its recommendation would be approved.

The Committee on Securities Laws Is Retained

Mr. Ransom arose to make a statement for the information of the Assembly. "I read the By-Laws of the Section of Commercial Law a few minutes ago," he said. "I wish to state to the Assembly that there is and has been nothing in those By-Laws which directly or indirectly authorized the Section of Commercial Law to take up and take over the functions of the Committee on Securities Laws and Regulations, and there is presented here a rather far-reaching question of whether a Section of the Association, of its own initiative and without action either by the House or by the Assembly, can first invade the functions and duplicate the functions of existing Committees, and then come here and ask that the Committees be abolished for the sake of avoiding duplication."

President Hogan thereupon put the question on the motion to abolish the Committee on Securities laws and Regulations. A division was called for and at the end of the count he announced that the motion had been defeated by the Assembly.

In putting the last motion in connection with the Survey report, which was to discharge the Committee itself, President Hogan paid tribute to that Committee and its valuable work. No Committee of the Association had been more industrious, or given more thought to its subject, or been more helpful to the Association than the Committee of which Mr. Stinchfield was Chairman. It had done a perfectly splendid piece of work, and now requested its discharge. The question was thereupon put and the Committee discharged.

Forum on the Bill of Rights

At the request of President Hogan, Mr. Grenville Clark, Chairman of the Committee on the Bill of Rights, took the stand to make a brief statement. Mr. Clark said that he was taking the floor for a few minutes, not to make a report or to take charge of a forum discussion as was contemplated by the program, but simply to say that owing to lack of time these would have to be dispensed with.

Yesterday, on looking at the calendar after the session, he had noticed that it was over a day behind. He had therefore decided to give up this part of the program for the simple reason that if they attempted to carry it out, there could be no other result than crippling and destroying the rest of the program. There would, of course, be no use at all in having a cursory, superficial discussion for a few minutes of this important subject, and it was certainly not being given up because it was less important than the subject of administrative law on which the distinguished gentlemen were to talk during the evening. In fact, there wasn't anything more important for the legal profession than the maintenance of our basic civil rights. However, in view of the situation he had volunteered the suggestion to the President that the report and discussion should be eliminated as a matter of necessity, to which he had reluctantly agreed. Chairman Clark continued:

"Now I will take two minutes more to mention two things about our report that cannot be mentioned in any other way and that the members ought to know about, things which have happened since the report was written. First, about the number of State and Local committees. They were reported as forty-eight. Since then, three new Committees have been appointed, the Committees of the State Bar Association of Texas, of the Bar Association of Milwaukee, and of Richmond, Virginia, making the total number of Committees fifty-one, twenty-seven of which are State Bar Association or State Bar Committees and twenty-four Local Bar Association Committees. The total membership of those committees is 442 members of the Association. In other words, that suggestion we made for the appointment of State and Local committees in this field is making progress.

"Second, near the end of the report of our Committee there is a discussion of the financing of the Committee in view of its contemplated activities, and it is stated there that a plan had been submitted to the Board of Governors for their consideration. I want to make clear that there is no mystery about that. It was put that way because at that time it was no more than a plan which might not come to fruition. Let me inform you that that plan was to request a grant or subsidy from the Carnegie Corporation of New York of $8,000 per annum for three years in aid of the educational work of this Committee on the Bill of Rights. Since the report was written, the making of that application was approved by the Board of Governors, the application was made to and considered by the Carnegie Corporation, and the grant has been made, and beginning August 1, this Committee, subject to its continuance and its operation from year to year, is entitled to this grant of $8,000 per annum for three years. (Applause)

"I will state briefly what we propose to do if that is done. The charter of the Carnegie Corporation states its purpose concerning that fund in one sentence: 'To promote understanding and knowledge among the people of the United States.' They considered that the educational activities of our Committee were in accord with that broad purpose. We intend, beginning with November or December, to publish a short bulletin every sixty or ninety days containing news of the Committee and of the fifty or more State and Local Committees, containing original articles concerning aspects of the Bill of Rights, the current bibliography of the subject, and analyses of the current decisions in the United States and other English speaking countries,—material of that sort with a view to having a short publication of very high quality to be circulated not generally, but perhaps only to 2,000 or so men especially interested in the subject.

"Then we intend, secondly, to attempt to have

written four or five short handbooks or pamphlets of thirty or forty pages of equally high quality, on various aspects of the Bill of Rights, Press and Assembly, Religion, etc.,—these to be used primarily through the American Citizenship Committee, now composed of members of the Junior Bar Conference, for the purposes of their program. I am very glad to know that it was seen fit yesterday to continue that Committee, because our work and theirs will be dovetailed together and in this way I think can be made more effective than it is at present without any extra expense.

"Thirdly, we hope, perhaps in collaboration with the Communications Committee, to make a really thorough study of the problem of the radio from the point of view of maintaining its freedom. Our Committee believes that the Association has a great contribution to make as to that problem if it is done thoroughly.

"Now that is all, gentlemen, except this, that I know there are some men who have some ideas on this subject, suggestions and criticisms with regard to the work of our Committee. As I have said, it is impossible to have it discussed here for the reason that I have given. There are a number of men who I know have wished to speak about it. In particular, Mr. O. John Rogge, Assistant Attorney General, in charge of the Criminal Division from the Department of Justice, is here, and I was going to call on him to describe the organization of the Civil Liberties Section of the Department of Justice. He has kindly agreed, if anyone is interested, to meet with me and any others who wish to discuss any aspect of the subject now, outside. There is no other place or time to do it. If anybody is interested to do that, and there are enough of us, we will move over to the Veterans' Building and have a round table conference. That, I think, is the best we can all do. Thank you." (Applause)

The Fourth Assembly Divides Into Two Simultaneous Sessions

In order to conserve time, the fourth session of the Assembly thereupon divided virtually into two parts, each well attended, in separate meeting places. One, with Chairman Grenville Clark presiding, conducted an interesting forum on the work and program of the Bill of Rights Committee. The other and formal session, with President Hogan in the chair, struggled hard to complete and dispose of the remainder of the scheduled program for the Assembly. Each session was highly interesting and informative.

Presentation of the Ross Essay Prize

Award of the prize to the winner in the Ross Essay Contest for 1939 was next on the program. President Hogan asked Professor Malcolm McDermott, of the Law School of Duke University, former President of the Tennessee Bar Association, to come to the platform. He complied and President Hogan made the award and introduced the successful contestant, as follows:

"The great State of California for nearly fourscore years had among its residents a great lawyer, a great judge, and a great citizen. Here in the city of San Francisco, upon the Circuit Court of Appeals of the United States, for years he labored as a judge, after having been the second judge of the United States District Court for the Southern District of Los Angeles. His interest in the American Bar Association and in the progressive study of the law was ever lively.

"When he died his will provided a fund which now amounts to $114,500, the income of which is to be devoted, first, to the award by the American Bar Association each year of a cash prize for the best essay submitted on a subject selected by the Board of Governors, and, second, to the printing and circulation among the profession of essays which receive the award. There will shortly be issued by the American Bar Association a volume that will contain all of the Ross prize essays thus far. The man to whom I refer is the late Erskine M. Ross of the State of California, benefactor of the Association and benefactor of the study of the law.

"In the present year your Board of Governors selected as the subject of the essay, 'To What Extent Should Decision of Administrative Bodies be Reviewable by the Court?' Ninety-four essays were submitted. Really careful study for months was put in on them. It was a difficult thing to select the winner, there were so many really good essays—about five of which I may add, will be published in your AMERICAN BAR ASSOCIATION JOURNAL. Finally, the award was made to the paper which the June JOURNAL published. The recipient of the award is Professor Malcolm McDermott, of the Law School of Duke University, Durham, North Carolina.

"Professor McDermott, I have pleasure, first, in handing you the check of the Treasurer of the American Bar Association, drawn on the Ross fund for $3,000 and, observing that you have your wife with you, I know where it will go. (Applause). It is a great pleasure to hand you also that which I know you will always take pride in having in your study, the certificate of award of the Ross essay prize for the most excellent paper submitted in the year 1939 on that very live subject.

"One of the conditions of the award is, sir, that you shall present to this Assembly at least the substance of your essay, and I now introduce you for that purpose. Professor Malcolm McDermott of Duke University." (Applause.)

Professor Malcolm McDermott Addresses the Assembly

Professor McDermott made the following introductory remarks before giving a most enjoyable summarization of his essay:

"The action of the previous speaker [Mr. Grenville Clark] in inviting anyone who desired further conversation with him to meet him immediately outside is so typically Southern it makes me feel quite at home on this occasion. (Laughter)

"It is needless to say that I am happy to come here and accept this award, and I do so only in that splendid spirit expressed by Major Tolman last evening, namely, with the feeling that it is a commission for further service in the great work of this American Bar Association.

"If I may comply with the request of the officers of the Association to present to you here something of what I tried to say, I am conscious of the fact that this audience must be divided into two groups. Those who have heretofore read the paper as it appeared in the June issue of the Association's JOURNAL will scarcely be interested in a further presentation of the views expressed therein, while those who have not read it are most likely not interested anyhow. It follows, Mr. President, that the unanimous vote is in favor of the briefest possible summary on this occasion, and to that end I confine myself to this very abbreviated manuscript."

Professor Malcolm McDermott read from his essay, which had been printed in full in the June

JOURNAL. In spite of previous publication, the summary proved interesting to the Assembly, which listened with close attention.

Election of Assembly Delegates Proceeds

President Hogan announced that the time had come to elect eight Assembly Delegates to the House of Delegates. The Assembly had voted on Monday to increase the number of its representatives from five to eight—four to be elected for a term of two years and four for one year. He said that nominations were in order, but before calling for them he asked Judge William L. Ransom, Judge Calvert Magruder and Mr. Charles Fahy, who were on the program for the Open Forum on Preparation and Presentation of Contested Matters under Labor Relations and Fair Labor Standards Acts, to come to the platform. He also asked Professor Orrin K. McMurray, of the University of California, who was on the program to present a report on the Work of the American Law Institute, to come to the platform.

These gentlemen complied, whereupon President Hogan called for nominations.

Various nominations for the two-year term were made and the ballots cast. Pending count of the vote and announcement of the result, President Hogan stated that in order to save time they would proceed with the Open Forum. He presented Hon. William L. Ransom, of New York, Chairman of the Committee on Labor, Employment and Social Security, to preside over the Forum. Mr. Ransom opened the proceedings and introduced the first speaker as follows:

Open Forum on the Preparation of Cases Under Labor Laws

"As probably all of you know, the American Bar Association, through the action of the House of Delegates last January, took an advanced and forward-looking point of view with respect to many matters in the field of labor laws—the Wage and Hour Act, the Social Security Act, and suggestions for the improvement of the National Labor Relations Act as it was viewed by the House of Delegates. This morning, however, the Association turns its attention in this forum to a different side of those controversial matters.

"Every lawyer in my part of the country, in his almost daily work for clients, is face to face with new and practical problems in the field of these labor laws, and it was deemed by the Board of Governors to be appropriate that, in connection with this meeting in San Francisco, there should be a forum, or institute, devoted to the development of practical suggestions from experience, for the aid of the lawyer in his work for clients.

"The first consideration will be given to the Fair Labor Standards of 1938, and then to the National Labor Relations Act. The two speakers will present their suggestions in first instance, and then, if time is available, there will be an opportunity for questions and for discussion within reasonable time limits from the floor.

Judge Magruder Opens the Forum on Labor Laws

"As the first speaker, I shall have the honor to present a man who was the General Counsel of the Wage and Hour Division of the United States Department of Labor from the time, I believe, that this Division was created, a distinguished teacher of law, a man who made an unusual record in aiding and administration of that law along acceptable lines, and was recently appointed and confirmed as Judge of the United States Circuit Court of Appeals for the First Circuit, in Boston. His topic will be, 'Administrative Procedures under the Fair Labor Standards Act of 1938.'

"It is with pleasure that we welcome to this forum a jurist, teacher, and lawyer, who has been so highly respected and regarded by us all, the Honorable Calvert Magruder."

Judge Magruder then addressed the assembly. His significant presentation of the Wage and Hours law appears in another part of this issue.

At the conclusion of Judge Magruder's address, which was listened to with close attention and liberally applauded, Mr. Ransom said he was sure that all were very grateful to Judge Magruder for having crossed the Continent to speak in the Forum, although circumstances had arisen which might have led him or anyone else in the same place to feel that he could be excused. If it met with the pleasure of the Assembly, questions from the floor or discussion of the Fair Labor Standards Act would be deferred until Mr. Fahy had presented his remarks on "Practice Under the Labor Relations Act."

The Forum was interrupted momentarily to hear the report of the vote on delegates for the term of two years. Secretary Knight reported that the four elected were Walter P. Armstrong, Ronald Foulis, William L. Ransom and Arthur T. Vanderbilt. President Hogan then declared the four gentlemen elected as Assembly Delegates to the House of Delegates, and called for nominations for the one year term. These were made and the tellers retired to count the votes.

Pending their report President Hogan announced that the subject for the Ross Essay Contest for the coming year would be "To What Extent May Courts under the Rule-making Power Prescribe Rules of Evidence?" The conditions of the contest would be published in the AMERICAN BRA ASSOCIATION JOURNAL. All members of the American Bar Association were eligible to enter the contest except former winners, Officers of the Association, members of the Board of Governors, or employees of the Association. The prize next year would be the same as that awarded to Professor McDermott—$3,000.

President Hogan thereupon turned the gavel back to Judge Ransom, and the Open Forum was resumed. Judge Ransom introduced Mr. Fahy as follows:

"Probably no lawyers in the active work of this profession before public boards or bodies is more conspicuously and continuously in the public eye than the counsel of the National Labor Relations Board.

"The subject of the next part of the Forum is, 'The Preparation and Trial of Cases before the National Labor Relations Board.' The Labor Committee of the Association is honored to welcome to the Forum the distinguished General Counsel of that Board, who has made a brilliant record in the advocacy of the contentions of his clients before the courts, and has proved to many of us an exceedingly effective opponent."

Mr. Fahy then presented his views and suggestions to an interested and appreciative audience. His address is printed in another part of this issue.

Practice Under the Labor Relations Act

President Hogan here stated that the Assembly would have a brief report on the work of the American Law Institute by Professor Orrin K. McMurray, of the University of California. Professor McMurray

thereupon gave his report, which will be printed in full in the September issue.

At this point Secretary Knight reported that John Perry Wood, Robert F. Maguire, Nathan William MacChesney, and Burt M. Kent had been chosen Assembly Delegates to the House of Delegates for the one year term, and President Hogan declared them duly elected.

Although the time of the Assembly was exceedingly limited and a great deal of calendared business remained, Chairman Ransom asked if anyone wished to ask either the speakers in the Labor Forum any questions before the next order of business was taken up. Lack of time constrained such discussion. The chairman then expressed the appreciation of the Committee and of the Association to the two distinguished speakers, and President Hogan added a further expression of appreciation to them for having come across the country to make, not only to this particular session, but to the Association's permanent record, these valuable contributions on the subject of procedure before the two administrative agencies which have become such an important part of business life in America.

Committee on Resolutions Reports

Mr. Richard Bentley, of Illinois, Acting Chairman of the Committee on Resolutions, was recognized and presented its report. It began with an expression of the Committee's deep sense of the loss suffered through the death last November of L. B. Day, one the Judges of the Supreme Court of Nebraska. Judge Day had served as Chairman of the Resolutions Committee, the report stated, from the time of its formation to the day of his death, and his intelligent and tireless labors, his sacrifices, his excellent judgment and his talent in dealing with the problems with which the Committee was confronted, will be remembered by all who worked with him.

The Resolutions Committee, the report continued, in accordance with Article IV, Section 2, of the Constitution, had afforded a public hearing to all proponents and opponents of resolutions referred to it. It had given full consideration to the views presented and had made such investigation of the subject matter of the resolutions as had been possible.

The first resolution presented by the Committee had been withdrawn by its proponent. Chairman Bentley read the report of the Committee on Resolution No. II, which asked the Association to authorize the Public Relations Committee to make every effort to inform the general public of the dignity and ethical standards of the legal profession and of the consciousness of lawyers of their public obligation. He stated that it was the judgment of the Committee that the resolution be referred, without recommendation, to the Committee on Public Relations as it now exists or to such appropriate Committee as might be created or continued by the House of Delegates. A motion to that effect was adopted.

Chairman Bentley thereupon read Resolution No. III which, in substance, asked that a Committee be created by the Association with power to cooperate with the Interstate Commission on Crime, to make a study of the advisability of immediate abrogation of the parole system throughout the country and the creation in its place of determinate sentence laws in connection with plans or programs for the scientific rehabilitation of criminals in penal institutions, and the adoption of rehabilitation laws for the return of criminals to society as useful citizens. The Resolutions Committee's recommendation with respect to this was as follows:

"The subject matter of this resolution properly lies in the field of one or more of the regular Committees or Sections of this Association. Moreover, it appears that the Interstate Commission on Crime, with which the suggested Committee is asked to cooperate, does not favor the theory, plan or program expressed in the resolution. It is the judgment of our Committee that the resolution should not be approved, and the Committee recommends that the resolution be not adopted."

On motion, the Committee's recommendation was approved by the Assembly.

Resolution as to Public Defenders

Resolution No. IV proposed that the American Bar Association approve in principle the establishment of a system of public defenders in the criminal Courts. The Committee's recommendation with respect to this was as follows:

"A similar resolution was offered at the 1938 session of the Assembly, and upon recommendation of the Committee on Resolutions then existing, was referred to the Standing Committee on Legal Aid Work. (63 A.B.A. Rep. 126).

"That Committee, after giving the subject extended study, has declined to approve the public defender plan on the ground that to do so might imply the disapproval of other plans for protecting the rights of indigent persons accused of crime. (Handbook on Reports of Sections and Committees, 1939, page 27).

"The Committee on Jurisprudence and Law Reform in its report this year appears to favor the establishment of a system of public defenders in the Federal Courts. (Advance Program, page 32).

"Some who have studied the subject prefer a system of voluntary defenders, similar to that established in New York City; others favor the "assigned counsel" plan in use in many localities; still others favor one system for the larger cities, and another for the smaller communities.

"This Committee, while recognizing that the proper administration of criminal justice requires that needy persons accused of crime shall be properly defended, is not prepared to say that the American Bar Association should declare, as a settled proposition, that a system of public defenders is the best or only means of accomplishing the desired result."

The Resolutions Committee therefore recommended the adoption of the following amended resolution:

"WHEREAS, the proposed establishment of a system to secure competent counsel for indigent persons accused of crime, has engaged the thoughtful attention of the Bar and public for many years and is a subject of vital interest and importance in the administration of criminal justice,

"THEREFORE, BE IT RESOLVED That the American Bar Association approve in principle the establishment in each locality of a system, best adapted to local conditions, as will be adequate and effective to assure competent counsel for needy persons accused of crime; and be it

"FURTHER RESOLVED, That consideration of practical plans for carrying out the principle thus declared be referred to the Section on Criminal Law, or to such Special Committee as may be appointed by the House of Delegates to study and consider the subject, such Section or Committee, as may be determined by the House of Delegates, to act in cooperation with the

Standing Committee on Legal Aid Work."

On motion the amended resolution recommended by the Committee was adopted.

Resolution as to Lawyers in Governmental Service

Resolution No. V, as summarized by the Committee, "expresses the thought that many positions in governmental service now occupied by laymen might in the public interest be better filled by lawyers. It calls for the appointment of a committee to make such positions available to lawyers, to the end, among other things, of reducing economic hardships among lawyers."

The report stated that the Committee recognized that many such positions, not only in the governmental service but elsewhere, might, in the public interest, be better filled by lawyers, but it doubted if a Committee of the Association could either with propriety or with effectiveness endeavor to secure such positions for members of the Bar. It therefore recommended that the Special Committee on the Economic Condition of the Bar be requested to study this subject, and a motion to this effect was thereupon adopted.

Resolution No. VI urged that the American Bar Association cooperate in the work of a Nation-wide committee composed of representatives of the American Legion, the National Association of Attorneys General, The Interstate Commission on Crime and other Nation-wide civic organizations in the work of crime prevention through law enforcement and the prevention of juvenile delinquency.

The report stated that the Committee was advised that a similar resolution had been adopted by the Section on Criminal Law, and added that the American Bar Association is now and always has been wholeheartedly in support of every legitimate effort to control and prevent juvenile delinquency and crime. In the opinion of the Resolutions Committee the Association should have a part in the work of this Nation-wide Committee, and it therefore recommended the adoption of the following resolution:

"RESOLVED, That the President of the American Bar Association is hereby authorized to appoint a member or members of this Association to represent this Association on the Nation-wide Committee on Crime Prevention, composed of representatives of the American Legion, The National Association of Attorneys General, The Interstate Commission on Crime and other Nation-wide civic organizations; the representatives so appointed to cooperate in the work of that Committee, but to have no power to bind the American Bar Association in any respect without its express consent."

The concluding resolution heard and reported on by the Resolutions Committee was then put to a vote and adopted, after which President Hogan announced that the business of the fourth session was completed and that the Assembly would hold its last session on Friday, after the adjournment of the House of Delegates, in the Veterans' Building.

Fifth Assembly Session Concurs in Certain Amendments of House of Delegates and Adjourns

The Fifth Session of the Assembly convened at 1:30 o'clock Friday afternoon, immediately after the final session of the House of Delegates. President Hogan called on Chairman Gay of the House of Delegates to report any House action which required further action by the Assembly. Chairman Gay asked Secretary Knight to make the report, which he did.

All of the resolutions which had been certified from the Assembly to the House, Secretary Knight stated, had been adopted by the House with one exception. That exception was the resolution with relation to public defenders. The House had modified the resolution slightly, and had also made it subject to the action taken by the House on Mr. Armstrong's report for the Committee on Jurisprudence and Law Reform.

On the question being put, the Assembly concurred in the action of the House. President Hogan thereupon declared the Sixty-Second Annual Meeting of the American Bar Association adjourned without day.

House of Delegates—Third Session

(*Continued from Page 666*)

the Committee on the Sesquicentennial Celebration be abolished was carried.

The Chairman of the Survey Committee moved that his Committee be discharged. This was carried after Mr. Mason had expressed thanks and appreciation for the work of the Committee.

Other Committees and Sections Report

The report of the Committee on Noteworthy Changes in Statute Law was received and filed. The report of the Committee on Commerce took the same course. Chairman James E. Brenner, of California, presented the report of the Committee on Legal Publications and Law Reporting, and stated that the Committee believes that within the coming year it can complete the surveys which it is conducting in an additional group of States. Chairman Brenner's motion that the Committee be authorized to continue its surveys, was adopted.

The report of the Committee on Law Lists was received and filed, as was the report of the Junior Bar Conference. Chairman Robert G. Storey, of Texas, presented the report of the Section of Legal Education and Admissions to the Bar, and moved resolutions granting provisional approval to the Hastings College of Law of San Francisco, and final approval to the University of Santa Clara College of Law, Santa Clara, California; the Chicago-Kent College of Law, Chicago, Illinois; and Wayne University Law School of Detroit, Michigan.

These resolutions were adopted, after which Mr. Storey outlined the work of the Section including its activities in relation to legal institutes and clinics. Secretary Knight stated that the Board of Governors had recommended, as to this section report "that in so far as any action may be proposed that would involve the expenditure of funds of the Association, no action be taken by the House and the matter be referred back to the Board of Governors for further consideration by its Budget Committee." On motion of Mr. Smith, of New Jersey, the course recommended by the Board of Governors was adopted.

Chairman Henry P. Chandler, of Illinois, outlined the report of the Section on Municipal Law; and R. Allan Stephens, of Illinois, presented the report of the Section on Bar Organization Activities, the consideration of which report was on motion of Mr. Smith, of

New Jersey, held over until the mid-winter meeting.

Chairman James J. Robinson, of Indiana, placed before the House the report of the Section on Criminal Law, which was received and filed. The report of the Section on Insurance Law took the same course, as did the report of the Section of Public Utility Law.

Fourth Session of House of Delegates Considers Reports of Sections, and Acts on Various Recommendations

THE Fourth Session of the House was enlivened by spirited debates. The first was caused by the report of the Section on International Law. A Resolution condemning bombing of civilians by air raids in wartime was passed, but one calling for arbitration of Mexican oil claims failed, and other resolutions presented by Section were referred to the mid-winter session of the House. Debate on recommendation approving S. B. 2687, for creation of Circuit Court of Patent Appeals, resulted in reference for study and report to mid-winter session, if bill is then pending. The use of the name of the American Bar Association in intervening litigations initiated by the Civil Rights Committee was attacked by Mr. Carey, of New Jersey, defended by President-elect Beardsley and others, explained as to many safeguards surrounding the Committee's action by Chairman Grenville Clark, and sustained by the House. The Board of Governors reported that the Carnegie Foundation had tendered a grant of $8,000 a year for three years in aid of the Committee's work, which had been accepted. The subject of the Ross Essay Contest for 1940 was announced: "To What Extent May Courts under the Rule-Making Power Prescribe Rules of Evidence?" President-elect Beardsley outlined plans for "streamlining" the Association's organization by certain action with respect to committees. The House promptly adopted the resolutions he asked.

THE fourth and concluding session of the House of Delegates was convened Friday morning at 9:15 o'clock. On motion, the reading of the record was dispensed with and the House took up its long calendar of reports by Committees and Sections.

The report of the Committee on Cooperation between the Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings, was received and filed.

The report of the Section of International and Comparative Law was placed before the House with the comment of the Board of Governors that in its judgment "many of the matters referred to in the resolutions submitted in the report of the section are ill-advised as subjects of action by the Association."

Chairman William Roy Vallance, of the District of Columbia, moved that the first resolution recommended by the Section, which related to "the claims of the American owners of oil properties in Mexico" and recommended that controversies as to unrestored property "should be submitted to an international tribunal for appropriate adjudication," be adopted. On motion of Mr. Ransom, of New York, the consideration of the resolution was temporarily deferred.

General Alexander Armstrong, of Maryland, Chairman of the National Conference of Commissioners on Uniform State Laws, gave a report, and the Secretary stated that the Board of Governors had recommended approval of the several proposed uniform laws submitted by the Conference. On motion of Bernard J. Myers, of Pennsylvania, the several Uniform Acts were approved by the House.

Specialized Court of Appeals for Patent Cases Is Debated

Thomas E. Robertson, of Maryland, Chairman of the Section on Patent, Trade-Mark and Copyright Law, gave the report of the Section. Its several recommendations with respect to changes in patent laws and regulations were approved by the House with the exception of its recommendation as to Senate Bill 2687, for the creation of a Circuit Court of Patent Appeals. For the House Committee, Sidney Teiser, of Oregon, had recommended approval of the recommendation in so far as it approved Senate Bill 2687 in principle, but the House Committee recommended "that the proposed amendment of such bill set forth in the resolution be not approved" for the reason that it imposed too restrictive qualifications for membership in the proposed special Court.

Sylvester C. Smith, Jr., of New Jersey, and George M. Morris, of the District of Columbia, debated with Chairman Robertson various phases of the matter and Bert M. Kent, of Ohio, explained several phases of the proposed Court. William L. Ransom, of New York, opposed the Section's recommendation by saying in part:

"Each of us here has to vote on this matter upon our individual responsibilities as lawyers here in a representative capacity, dealing with the well-considered report of a Section for which we all have very great respect; yet, there is a point of view, since we have to vote, that I think I ought to state for your consideration. I do not believe we can look at this question solely from the viewpoint of patent law. It ought to be integrated with whatever philosophy we have with respect to the judicial system of the United States. Here is an excellent Section in a special field, and it is intent very much on the problems of expedition as to patent cases but there are more important things in the judicial system of the United States than expedition or specialization with respect to any class of cases.

"So far as I am concerned as a member of this House, I am profoundly opposed to the idea of centralizing and specializing the judicial system of the United States into tiny cubicles rounded up in Washington, with additional judges appointed in numbers for this or that, at the present time. This would create five new judges. The question of whether this Court would sit wholly under the shadow of government is not provided for by the bill, and while I realize it may be true, as the chairman of the Section represents to us, that this bill will be rushed, so far as I am concerned, I do not believe that this bill should be approved or

dealt with by this Association until it comes before us upon a well considered report by our Committee on Jurisprudence and Law Reform. If that means that the bill will be passed before this House meets next January, I am reconciled to that, but the thing that I am opposed to is an approval of this kind of a proposal for the creation of this kind of a Court in that kind of an atmosphere."

Motion to Defer Action Prevails

Mr. Ransom moved that the matter be referred to the Committee on Jurisprudence and Law Reform for report at the midwinter meeting of the House if the bill is then pending in the Congress.

Mr. Robert Stone, of Kansas, supported the motion to postpone and refer the bill. Mr. Kent, of Ohio, declared that "I just want to say that I think there is a lot of merit in what Judge Ransom has said and I support his motion."

Judge Arthur G. Powell, of Georgia, spoke in favor of voting down the Section's recommendations, rather than postponing consideration of it. "We are opposed," he said, "to the creation at the present time of any more Federal Courts."

A. G. C. Bierer, Jr., of Oklahoma, moved as a substitute for all pending motions that the House disapprove Senate Bill 2687 on principle.

Judge Orie L. Phillips, of New Mexico, referred to the diversities of opinion among patent lawyers and others, as to the proposed Court, and said that "we should not dispose of this matter in as summary a manner as suggested by my friend from Oklahoma. . . The sensible thing to do is to have this bill go before one of our Committees charged with the duty of considering such matters and give it careful consideration on the merits, and see whether or not the bill is meritorious and whether it needs amendment."

In closing the debate upon his motion, Mr. Bierer said that "in the face of the statement that the bill is likely to be passed before we can express our opinion on it, my motion is based upon my general belief that I am not in favor of centralized Courts of technical experts, no matter how good they are, and I have more confidence in the general judicial process and in the Circuit Courts of Appeal than I would have in such a Court."

Mr. Bierer's motion to disapprove the bill in principle was put to a vote and was defeated. The pending motion by Mr. Ransom of New York was then adopted.

Chairman Giles J. Patterson, of Florida, made a statement concerning the work of the Committee on Cooperation between the Press, Radio and Bar, and made a motion that the report of the Committee be approved. This motion prevailed.

Chairman Jacob M. Lashly, of the Section on Commercial Law, gave an account of the proceedings of that Section and moved the adoption of the resolution proposed by the Section in opposition to the enactment of Senate Bill 2550, as to the appointment of referees in bankruptcy and the placing of them under fixed salaries. The resolution recommended by the Section was adopted and the House resumed its consideration of the report of the Section on International and Comparative Law.

Jurisdiction and Action of Association as to International Controversies Arouses Debate

An issue as to whether the resolutions in relation to the expropriation of oil properties in Mexico were within the province of the Association and the House of Delegates arose and was debated.

Mr. Wm. Logan Martin, of Alabama, acting Chairman of the House Committee for consideration of the recommendations of the Section of International and Comparative Law, reported that: "Your Committee has considered this recommendation and feels that it is both unwise and inappropriate for it to be adopted. It is unwise because it is an interference by this Association in matters of a litigated character pending in a foreign country. The resolution goes to this extent, that if the claims of the owners of land which have been expropriated by the Mexican Government are not met as we deem they should be met, then they should be submitted to a further tribunal of an international character for their determination.

"We think the resolution is inappropriate for the reason that it is beyond the sphere of activities of this Association. That sphere includes five general fields, none of which can be extended to include matters of this character. Our activities, while broad and extensive, are confined to this country. A reference to the powers of the Association, as set out in the Constitution, expressly limits our field to our own country. We have problems enough here to solve, and for that reason the Committee thought that our activities should be confined and that this resolution should not be adopted by the House of Delegates."

Henry P. Dart, of Louisiana, supported the resolution and opposed the construction which Mr. Martin and the House Committee had placed upon Article I of the Constitution of the Association. "It is true," he said, "that these objects do not mention the subject of international law, but the Constitution goes on and creates a Section of International and Comparative Law, and therefore has expressly recognized that the problems of international law are within the scope of the American Bar Association. Furthermore, the Supreme Court of the United States has long ago held that international law is part of the law of the United States."

Former Judge James W. McClendon, of Texas, declared that, "I thoroughly agree with Mr. Dart that the question of arbitration in international matters is a subject within the jurisdiction of this body, but that is not the question before the House at this time. The Association has already gone on record numerous times favoring arbitration. We all believe that disputes should be settled by peaceable means and by arbitration when they cannot be settled by negotiation between the parties.

"The question here is whether, in a particular dispute between private parties, this Association should go on record as making a recommendation which is simply to recommend that the usual procedure which this Association is in favor of be applied in a particular instance. I therefore think that while Mr. Dart is generally correct as to the jurisdiction of the Association, I do not think this particular matter comes within the purview of the Association."

Charles A. Cantwell, of Nevada, urged that the present resolution, in the wording submitted, goes beyond the province of the Association and "amounts to a prejudging of this particular dispute."

After Chairman Vallance had closed the debate in support of the resolution, a vote was taken and the resolution was rejected.

Bombing of Civilians Is Protested

The next resolution recommended by the Section, related to the bombing of civilians. As to this resolution, Wm. Logan Martin reported that:

"The Committee feels that it is beyond the sphere of activity of this Association to adopt this resolution. While it does not disagree with the principles expressed as humane and just, nevertheless it feels that the Association is going beyond its constitutional limitations in adopting the resolution."

L. Ward Bannister, of Colorado, favored the resolution. "According to one line of authority," he said, "treaties themselves are international law, and can it be that this great Association is unwilling to take a position in favor of the elimination of the bombing of civilian populations? Can it be that in some of the most fundamental questions that pertain to international relations this Association is to remain silent? I cannot take the view that we exist simply for the purpose of improving the law on bills and notes and on patents and on labor relations, and can take no position on questions which are of even greater moment to the existence of this and of other nations."

Mr. Roy C. Ledbetter, of Texas, thought the adoption of the resolution at this time would be unwise.

Henry P. Chandler, of Illinois, said that he was "not in sympathy with the view that international law is not within the purview of this Association." Accordingly, although he had opposed the resolution in relation to oil properties in Mexico, he favored the resolution for "the limitation of the inhumanity of war."

W. E. Stanley, of Kansas, proposed an amendment of the resolution so that it would relate to the approval of the rules promulgated by The Hague Conference. In supporting Mr. Stanley's motion Mr. Kent, of Ohio, obtained the agreement of the Chairman of the Section that the resolution consisted of the paragraph which Mr. Stanley's amendment did not disturb and that the rest of the submitted resolution was explanatory. On a division of the House the amendment by Mr. Stanley was adopted and the Section's resolution as amended was thereupon approved.

On the motion of L. Stanley Ford, of New Jersey, the consideration of the eleven remaining resolutions submitted by the Section was deferred until the midwinter meeting of the House.

Report as to Bombing of Food Supplies Is Directed

On unanimous consent, L. Ward Bannister, of Colorado, offered and moved the adoption of the following resolution, which was carried:

"RESOLVED, That the Section of International and Comparative Law be instructed to study and report at the midwinter meeting of the House of Delegates regarding the provisions that might properly be recommended for inclusion in a treaty to protect from bombing vessels laden solely with food supplies, and their immunity from blockade."

The report of the Section on Real Property, Probate and Trust Law was presented by Chairman George E. Beers, of Connecticut, and was received and filed.

In the absence of George H. Smith, of Utah, John Kirkland Clark, of New York, gave the report of the Committee on Draft, concerning the two resolutions referred to that Committee. The resolution by Morris B. Mitchell, of Minnesota, for modification of the action taken at the 1938 meeting of the House, so as to permit the Association to bear the expense of mailing out notices of State meetings to American Bar Association members, was explained by Mr. Mitchell and adopted by the House.

Resolution as to Bill of Rights Committee Is Discussed

The liveliest debate of this Annual Meeting of the House then ensued, as to the resolution introduced by Robert Carey, of Jersey City, concerning the powers and conduct of the Committee on the Bill of Rights. Mr. Carey was recognized in support of his resolution, which he said was "directed simply at one thing, the matter of the use of the name of the American Bar Association in intervention litigations instigated or initiated by the Committee on Civil Liberties—they now call it, I believe, the Committee on the Bill of Rights." . . . I think it is a pretty serious thing these days for us to allow the name of the American Bar Association to be loosely used in litigations in which we have no personal, direct interest, and in which, in my judgment, most of the bar is not probably concerned.

"You know, this Civil Liberties Committee came out of the clear sky to all of us a year ago at the convention. After the speech of our President-elect, and it was a wonderful speech, we were asked in this House, just at the concluding hour of the session, Friday, a little later than this, to adopt a resolution creating this Committee. There was some objection to it, but the appeal was made that it was the President's program, we should put it through, and we did. I voted for it.

"Let me tell you something—a very wonderful speech was made at the opening of our convention by our President, the finest speech I have ever heard at a bar meeting, and it was full of courage. One of the things he said was that the Bill of Rights was placed into the constitution to protect us even from committees—and from presidents!

"There has been some shifting in the construction of our rights under that Bill of Rights in just recent days. He said he was very regretful about that. He did pay high compliment to two judges of the United States Court, Justice Butler and Justice McReynolds—and, a strange thing, in the first case brought by this bar, those two judges, commended so highly the other day, voted to say that our bar didn't know what it was talking about. (Laughter). A strange picture!

"For sixty years, this bar never did business like this. Why should we now be disturbed by all these subsurface elements who are trying to get new forums every day for the propagation of their particular propaganda? Why should you and I, as lawyers, let all the rag-tags of life, the crackpots, the nuts—and the world is full of them—reds you can call them if you want, or just let's call them radicals, if you want—why should we become the lap of all these elements in the life of the land, trying to solve their problems?

"This whole problem developed, of course, out of something that happened in my state. That is all settled. The court has spoken, and we in New Jersey have taken care of that problem. We ended

a lot of wicked things over there, and they will never get new life. The Supreme Court has shown us the way to protect our State, and we are following the direction of the court, and our State will be protected.

New Jersey Bar and Civil Liberties

"But let's see what this thing did, what you did in my State in the Bar. Only three weeks ago, the Bar of New Jersey met. A resolution was offered, sent to us by the Civil Liberties Committee of this bar, which offered to place New Jersey in the list of Civil Liberties Committee States.

"We had a wild battle lasting nearly all night in the New Jersey Bar convention. I spoke there. The greatest lawyer in New Jersey, Merritt Lane—who would have been here but he died two weeks ago—Arthur Vanderbilt's closest friend at the bar, the greatest lawyer in my judgment of the East, led the battle against the principle of the adoption of any such thing.

"The whole argument then was that a mere Civil Liberties Committee to study liberties and things like that might be of no harm at all, a committee that would report like all the rest of the committees report. But to give a committee power, even with the approval of the President, to begin litigations or intervene in the name of the American Bar, is something that has never been done before.

"We said, down at the New Jersey Convention, by a three to one vote, that we didn't want any such thing a part of the program of the activities of our bar. . .

"Keep in mind the fact that the New Jersey case is over, so I am not speaking for that. I wasn't in the Jersey case. I had no more concern in it than any of you. It was suggested in the press here that I was here as a representative of the Democratic organization of my city. Well, I am a Republican, and I fought that organization for twenty-five years as no other man has ever fought it. Mr. Vanderbilt will tell you that because he and I have fought it together.

"I am fighting it now. I am fighting for the American Bar now. Oh, what a reputation we have builded in the sixty years! When we were needed and the Supreme Court of the United States was attacked, our voice was heard from one end of this land to the other because the people knew that we didn't raise our voice to be heard unless the occasion demanded. . .

"We don't have to tell the world that we stand for the Bill of Rights. They all know it." (Applause)

Charles A. Beardsley Replies to Judge Carey

Charles A. Beardsley, of California, made the principal reply to Mr. Carey. He said:

"If I correctly understand the delegate from New Jersey, his argument is that now that the American Bar Association, through its Civil Liberties Committee, with the approval of the House of Delegates and the Board of Governors and the President of the Association, has cleared up the situation in New Jersey so they have no trouble there and have assisted the United States Supreme Court in the clearing up of that situation, there is no further work to be done on behalf of civil liberties in any part of the United States? I disagree with that conclusion. With all due respect to the necessity of clearing up things in the State of New Jersey, I recognize that there are civil liberty problems in other parts of the United States, and notwithstanding the assurance of the delegate from New Jersey, I am not quite so sure that other civil liberties problems might not arise even in that State.

"As far as this Committee is concerned, I do not agree with the delegate from New Jersey that it came out of a clear sky. It seems to me that it came out of a cloudy sky, and the sky has cleared considerably as the result of the work of this Committee under the sponsorship of the American Bar Association during the last year.

Public Support for Bill of Rights Committee Attested

"There isn't any activity that this Association has undertaken in my memory that has gained for the Association more in the way of public support from the public generally, from the press of the land, than the work of this Committee on the Bill of Rights.

"I think that I will not take second place to the gentleman from New Jersey in expressing my regard for the reputation of the American Bar Association. I want to see it continue, standing for the Bill of Rights and standing for the Constitution of the United States and standing for the orderly administration of justice.

"What is the situation in reference to this matter of taking part in litigation? I don't like to take your time to read By-laws, but there is a very short one that covers this situation. It is Article XI of the By-laws of the Association: 'No Section or Committee shall assume to represent the Association in Court or in any controverted procedure before any other tribunal unless authorized to do so by the House of Delegates or the Board of Governors, or, in case of emergency, by the President.'

"The resolution from the delegate of New Jersey proposed to make an exception to that By-law and to say that it is a fact as to every Committee of the Association, every Section of the Association, except only the Committee on the Bill of Rights. It is proposed, so far as that is concerned, that that one Committee shall have no right to speak in the name of the American Bar in any Court or in any litigated matter, no matter whether the House of Delegates thinks it should, or no matter whether the Board of Governors thinks it should, or no matter whether the President, in a case of an emergency, thinks it should.

"I see no reason for that hamstringing of this outstanding Committee of the Association, and I hope that it will be allowed to function for another Association year with as much credit to the Association as it has functioned during the last year; and I say in all sincerity I believe it has functioned to the credit of the Association in a very marked degree. I hope that this resolution will be defeated." (Applause.)

Henry I. Quinn, of the District of Columbia, urged "this House to support the President of the Association and this Civil Liberties Committee to the end that we may see that the civil liberties of even the lowliest of our people are protected. If this Association does not stand behind the President now and stand behind this Committee, it is

taking a step backward which in the near future it will sorely regret."

Statement by Chairman Grenville Clark

Chairman Grenville Clark of the Bill of Rights Committee opposed Mr. Carey's resolution and made a brief statement concerning the work of the Committee. He said in part:

"Of course, virtually every question of this sort is controversial, and in those two instances that I have cited also of a strong political cast. Let's face that. Don't try to have a Committee on Civil Rights of the American Bar Association and at the same time tell it that it isn't to take part in anything having a controversial political aspect. The two thoughts are absolutely incompatible. Don't tell them also that they shall not take part in any dispute that arises locally. Every historical civil rights case for generations has arisen locally in a place between two people, two authorities, or a person and an authority.

"I ask you to read, not now perhaps but later, the very careful statement of our Committee dealing with the policy which we think should be followed in this matter. We say that the power, the authority, given by the present resolution to intervene should be exercised very sparingly, only in cases involving basic constitutional issues, and only in cases where an impartial presentation from a public standpoint seems advisable. We say also, of course, it is automatic, that that authority shall only be exercised under the By-laws with the approval of the Board of Governors, subject only to the qualifications about emergencies which would virtually never occur, so that you can rely on the fact that if there are any more interventions—I don't know whether there will be or not but if so it will only be one or two—it will be done only after the judgment first of your Committee, second after reference to the President, third after approval by your Board of Governors.

"So, in conclusion, I think I am expressing the thought of those men when I say that the matter should be faced up to, and it should be realized that if you want such a Committee at all they are going to deal in one form or another under the various powers they have—they have other powers just as important or more so than this power to intervene—they are going to deal occasionally and considerately, and only with the consent of the Board of Governors, but when they do they must deal and will deal with questions arousing emotions and feelings, and having, of course, a controversial and often a political aspect. Either recognize that, or else say, 'We are not in that field at all; let's retire from it.' Don't put your Committee in the hypocritical and futile position of being before the country with certain functions and duties, and being held out as having those purposes and those duties, and then deprive it of the power to fulfill them. That is the thing, at all events, to be avoided." (Applause.)

Judge Carey's Resolution Is Defeated

The previous question was moved and carried and Judge Carey's resolution was put to a vote and was rejected by an emphatic vote, after which Judge Carey said that he withdrew his resolution.

Owing to his duties as a Justice of the Supreme Court of Wisconsin, Chairman Edward T. Fairchild of the Board of Elections, was not present. The report of the Board of Elections was tersely given by William P. MacCracken, of the District of Columbia.

Secretary Knight reported that the Board of Governors had selected as the subject of the Ross Bequest Essay for the ensuing year: "To What Extent May Courts Under the Rule-Making Power Prescribe Rules of Evidence?"

Secretary Knight reported also that the Board of Governors had elected as an honorary member of the American Bar Association Mr. R. L. Maitland, King's Counsel, member of the legislature of British Columbia, and delegate of the Canadian Bar Association.

The Board reported further that the Carnegie Corporation, a New York Foundation, had tendered a grant of $24,000 to the American Bar Association for the educational and publication work of the Bill of Rights Committee, the sum to be given in three annual installments of $8,000 each. The grant was without "strings" or "conditions" as to the matching in any respect the sum, or any part of it. The Board of Governors accepted the grant, and their action was approved by the House of Delegates.

Walter S. Fenton, of Vermont, as Chairman of the Board's Committee on By-laws, reported and recommended the approval, pursuant to Article IX, Section 2, of the Constitution, of the By-laws proposed by the new Section of Taxation.

At this juncture President Hogan assumed the Chair and recognized William G. McLaren, of Washington State, who moved the appropriate resolutions thanking the San Francisco Bar Association and its members for their generous hospitality and magnificent program of entertainment at this Annual Meeting. President Hogan called for a standing vote upon the motion, which was unanimously adopted amid hearty applause.

Election of Association Officers Takes Place

Secretary Knight then certified that the meeting held by the State Delegates on January 10, 1939, the following persons had been nominated for Association offices:

For President, Charles A. Beardsley, California.

For Chairman of the House of Delegates, Thomas B. Gay, Virginia.

For Secretary, Harry S. Knight, Pennsylvania.

For Treasurer, John H. Voorhees, South Dakota.

Each announcement was greeted with cordial applause. As no other nominations had been made by petition, Mr. Teiser, of Oregon, moved that a unanimous ballot of the Association be cast for the officers nominated by the State Delegates.

President Hogan then presented first the new member of the Board of Governors from the First Circuit, George R. Grant, of Massachusetts; the new member of the Board from the Second Circuit, Philip J. Wickser, of Buffalo; the new member from the Sixth Circuit, Carl V. Essery, of Michigan; and the new member from the Tenth Circuit, G. Dexter Blount, of Colorado. Treasurer Voorhees and Secretary Knight were presented to the meeting, as was the newly elected Chairman of the

House of Delegates, Thomas B. Gay, of Virginia. All were heartily applauded.

President-Elect Beardsley Is Presented

In presenting to the meeting his successor, President Hogan said to incoming President Beardsley:

"You have an opportunity before you that any member of our profession should be proud to be given, an opportunity to serve the American Bar Association, the legal profession and, above all else, the American public. That you will seize that opportunity and serve in a manner to accord with the traditions of the great names that you will find among the many on the gavel I shall shortly surrender to you, I have an abiding confidence."

President-elect Beardsley was greeted with cheers and applause from all parts of the House, as he arose to express his appreciation of the high office which had been bestowed in recognition of his many years of capable service to the organized Bar of California and the Nation.

President-Elect Beardsley Addresses the House

"I appreciate the honor of being elected to the office of President of the American Bar Association," he said. "I appreciate the opportunity that this office gives for service to the Bar, to the Courts, and to the public. I shall try to be worthy of the honor, improve the opportunity for service, and be equal to the responsibility."

"As the authorized spokesman of the thirty-two thousand members of the American Bar Association, I express to our retiring President, Frank J. Hogan, their sincere appreciation of his faithful, untiring and brilliant service, on their behalf, and on behalf of the American legal profession as a whole, during the past year.

"As long ago as last January, I heard rumors that it might be my privilege, about the middle of July, to assume the duties of President of the American Bar Association. During the last six months, upon the assumption that there might be some foundation for these rumors, I have been giving some attention to preparation for the discharge of those duties. Through the courtesy of President Hogan, I have been accorded the privilege of attending, as an observer, the sessions of the Board of Governors last May in Washington and during the past week here in San Francisco. I have conferred personally, and by correspondence, with many officers, committeemen, and members, of the Association, in reference to the work and problems of the Association, and particularly in reference to the personnel of committees for the coming year. As a result, I am now prepared to appoint, and I shall appoint as soon as this meeting adiourns, all, or substantially all, of those committees of the Association that I expect to be called upon to appoint."

A "Family Talk" to Members of the House

The incoming President then proceeded with an earnest informal "official family" talk to the members of the House, concerning some of the administrative problems which are within their province. He said, in part:

"I conceive it to be the duty of the President of the American Bar Association to make the acquaintance of the official family of the Association, and to assume something akin to parental attitude toward the official family. It was not always a very large family. Fifteen years ago, the names covered less than fifteen pages of the Annual Proceedings. Ever since that time, the official family has had a steady growth.

"Ten years ago, it occupied twenty-two pages, five years ago, thirty-eight pages. During the year ending with the adjournment of the Cleveland meeting, there were fully twice as many members added to the official family as constituted the entire official family of fifteen years ago. In the current volume, it occupies a total of one hundred and two pages.

"One of the reasons why our official family is so large is that we have so many Committees. The number listed exceeds seven hundred.

Duplications of Association and Section Committees

"Many of our seven hundred Committees are duplicates of other Committees, with consequent conflicting recommendations to the Association, and to other organizations and groups, official and unofficial. I have no reason to believe that I have discovered all of these duplications; but I note the following in our Association and Section organization:

"Two Committees on Ethics and Grievances[1];
"Two Committees on the Economic Condition of the Bar[2];
"Two Committees on the Bill of Rights[3];
"Two Committees on Administrative Law[4];
"Two Committees on Aeronautical Law[5];
"One Committee and one Section on Cooperation with State and Local Bar Associations[6]; and
"Five Committees on Public Relations.[7]

Local Committees on Procedural Reform

"In addition to duplications within our own official family, we have set up local Committees in the several States, the functioning of which conflict with the functioning of duplicate Committees of the State and local Bar Associations that are constituent parts of the American Bar Association, through their representation in the House of Delegates. I desire to call your particular attention to one group of these duplicating local Committees. I refer to the forty-nine State Committees on Procedural Reform, created by the House of Delegates last year at Cleveland. These Committees were created upon the recommendation of the Section of Judicial Administration, without debate, and with little or no discussion. The membership of these Committees, as appointed by President Hogan,

1. Standing Committee, and Committee of Section on Patent, Trade-Mark and Copyright Laws.
2. Special Committee, and Committee of Junior Bar Conference.
3. Special Committee, and Committee of Junior Bar Conference.
4. Special Committee, and Committee of Section of Judicial Administration.
5. Standing Committee, and Committee of Section on International and Comparative Law.
6. Committee of Section of Real Property, Probate and Trust Law, and Section of Bar Association Activities.
7. Special Committee, Sub-Committee of Board, Committee of Bar Association Activities, Committee of Patent, Trademark and Copyright Law, and Committee of Section of Real Property, Probate and Trust Law.

added three hundred and ninety-three members to our official family.

"I desire to recommend to the House of Delegates that these local Committees be discontinued. I am in complete accord with the idea that procedural reform is of the utmost importance, and that it is and should be a major objective of the American Bar Association. I agree that there is a real need for procedural reform in most, if not in all, of the several States. I agree, further, that many, if not all, of the sixty-seven reforms, to promote which these Committees were authorized and appointed—insofar as they are not already a part of the law of a particular State—may well be adopted in each of the forty-nine jurisdictions for which these Committees were appointed. The appropriate means—available to the American Bar Association—of attaining those objectives—of bringing about procedural reforms in the Courts of the various States—is by working with and through the State and local Bar Associations of the various States.

"In at least some of the States, procedural reform is receiving adequate attention of State and local Bar Associations. In many of the States, a substantial part, and in some of the States the major part, of the sixty-seven reforms are in full operation, largely as a result of the activities of the State and local Bar Associations. In some States, there is no place for an American Bar Association State Committee on Procedural Reform.

The Status of Procedural Reform in California

"I know that this is the situation in California. In this state, the State Bar has a very effective Committee on the Administration of Justice, which Committee for many years has been giving painstaking attention to procedural reforms. Largely as a result of the work of this State Bar Committee, most of the sixty-seven reforms were in operation in California long before our Cleveland meeting. The State Bar of California gives to this one committee more in the way of financial support, in its work of procedural reform in a single jurisdiction, than the American Bar Association has given, or is able to give, to the work of its State Committees on Procedural Reform in all of the forty-nine jurisdictions combined. Quite obviously, there is no need and no place in California for a local American Bar Association Committee on State procedural reform.

"Yes, I know that, in some of the States, the State Bar organizations are not as effective as is The State Bar of California. But, even if it were to be conceded that the American Bar Association should set up its own local State Committees on Procedural Reform in States, if any, in which the State and local Bar Associations are ineffective, it would not follow that the American Bar Association should set up such local Committees in all of the States, as was directed by the House of Delegates at the Cleveland meeting.

"Nor do I mean to imply that we should maintain such Committees in any of the States. If it is suggested that, because voluntary Bar Associations are less effective than are integrated Bars, with their all-inclusive memberships and with their governmental powers, and that therefore we should set up our own local Committees in those States which have no integrated Bar, we might well bear in mind that we too are a voluntary Bar Association. I recommend the discontinuance of all forty-nine of these local State Committees—those in States without integrated Bars, as well as those in States with integrated Bars.

Methods Which Should Be Followed By the Association

"If in some of the States the State and local Bar Associations are lacking in effectiveness, we can help them make themselves more effective, and we can accomplish more in the way of procedural reform, by working with and through the State and local Bar Associations, and with and through their several officers and Committees, than we can by setting up local American Bar Association Committees, to tell their legislatures or their Courts how justice should be administered in their several States.

"I am firmly convinced that it is wrong in principle, and that it is singularly futile, for the American Bar Association to maintain its separate local Committees, in the several States, either in competition with, or in duplication of, the work of State and local Bar Associations, either in an endeavor to secure local procedural reforms from the State legislatures and the State Courts, or for the purpose of engaging in any other distinctly local activity. For the same reasons that I believe in State and local government—for the same reasons that I believe that local governmental affairs can be better administered locally than from the National capital in Washington, I believe that local Bar Association activities can be better administered locally, by State and local Bar Associations, than from the American Bar Association's National capital in Chicago."

Duplications in Committee Assignments

President-elect Beardsley then referred to "a third type of duplication—a duplication of the same name on numerous Committee assignments, most marked in the various Section Committees." He added that "a casual check discloses the names of three members each with eight different assignments for official service to the Association, eight others each with seven such assignments, nine others each with six such assignments, and twelve others each with five such assignments."

The "family talk" of the incoming President next adverted to the fact that "many of our Committees are far too large. The By-laws limit the size of Committees of the Association, with a few exceptions, to five members. The By-laws place no limitation on the size of Section Committees. And many of the Section Chairmen have appointed Committees, without restraint, and with little, or no, sense of proportion. Section Committees of from fifteen to twenty-five members are not uncommon. And I note, in the official family list, one Section Committee with fifty-one members,[8] and another with seventy-six members including twelve chairmen and sixty-four vice-chairmen.[9]

"If there is any reason, it is not apparent, why, in an Association the By-Laws of which limit the size of the Association's Committees to five members, the Sections should have Committees of

8. Membership Committee of Section on Municipal Law.
9. Membership Committee of Section on Insurance Law.

fifteen, or twenty-five, or fifty-one, or seventy-six members, or of any number of members—except under unusual circumstances—in excess of the number fixed in the By-Laws for Association Committees. Hendrik Van Loon defines a committee as 'a group that succeeds in getting something done only when it consists of three members, one of whom happens to be sick and the other absent.' Conceding that this is a slight exaggeration, it is common knowledge that a smaller Committee functions more effectively than does a larger Committee."

Reasons for a More Compact Organization

President-elect Beardsley then suggested for the consideration of the House that "Even if an official family, the listing of which occupies one hundred and two pages of small type in the Annual Proceedings, could function as effectively as a smaller official family, there are at least two very good reasons why its size should be reduced:

"In the first place, it takes too much time, and consumes too much energy, to assemble it. The second reason appears to me to be equally apparent and impelling: I refer to the amount of money it costs to support such a large family.

"Our large family adds substantially to the cost of our operations. It adds to the cost of assembling the copy for the Annual Proceedings. It adds to the cost of printing and mailing the Annual Proceedings. It adds to the cost of stationery and postage. It adds immeasurably to the cost of operations at the Headquarters office. Insofar as our Committees function other than by mail, it adds to the cost of travel. There is an intimate relationship between the size of our official family and the cost of printing. And our Special Committee on Printing tells us that our total annual printing bill approximates one-half of our total annual income.

Decrease of Committees

"The disposition by this Annual Meeting of the report of the Survey Committee is not calculated to result in any reduction in the size of our official family. Although it has effected a discontinuance of several committees, it has also effected the creation of an additional Section. And, if past experience may be taken as a criterion, an additional Section means about fifteen new Committees besides a Section Council. And a Section Council contributes twelve members, and fifteen Section Committees contributes fifteen times an unlimited number of members, to our official family.

"But the report of the Survey Committee has served to remind us of the size of our official family, and of the necessity of doing something about it. Some progress, in effecting a cure, has been made.

"To a limited extent, the size of the official family is within the discretion of the President. And I expect to exercise that discretion, to the end that some substantial reductions will be effected. I have made some suggestions to Chairmen of various Sections, in reference to the size and number of Section Committees. And I have received some assurances of a desire to cooperate to the fullest possible extent.

"I respectfully request the assistance of the House of Delegates, and of the Chairmen and members of the Councils of the various Sections, in reducing our official family to such a size that its support will leave available, for other purposes, more of the productive energy of those charged with the duty of making Committee appointments, to a size that will permit it to be appointed promptly upon the adjournment of the Annual Meeting, to the end that it can function for all, or for substantially all, of the Association year, and to a size that we can support, without unnecessarily handicapping the useful and necessary activities of the Committees, of the Sections, and of the Association as a whole.

"Possibly this end is not fully attainable without amendments to the By-Laws. But it can be attained in a substantial part, without amendment, and so as to be presently effective, by the voluntary exercise of a reasonable degree of restraint by Section Chairmen, and by resolutions of the House of Delegates."

Specific Resolutions Requested

The incoming President then respectfully requested the House of Delegates before the adjournment of this Annual Meeting, to adopt a series of resolutions, which were later offered, to facilitate the solution of the indicated problems. In concluding, President-elect Beardsley said:

"I fully realize that the hour is late, and that all of you are anxious to enjoy to the full, during these closing hours of your San Francisco meeting, the generous hospitality that has been provided by your hosts, the Bar Association of San Francisco. But I also realize that a new Association year is about to begin—a year during which those of us who are here—as well as the many hundreds of others of our brothers in the law who have responded to the call for service—are anxious to make—to the fullest extent within their power—a year of worthwhile service, to the Bar, to the Courts, and to the public.

"I hope that, before this Annual Meeting adjourns before your friend and my friend, Frank J. Hogan, allows the gavel to fall, thus marking the close of his year of faithful, untiring and brilliant service—you will tarry just a little while and consider and act upon the recommendations I have made, to the end that thereby you may aid in making the new Association year the kind of a year that you and I want it to be."

House Asks a Hearing As to O'Mahoney Bill

President Hogan announced that the Chairman of the House had received a message from Washington the effect that Senator O'Mahoney, of Wyoming, had introduced within the past few days a bill to amend the Sherman Act so as to permit the Federal Government to recover in the event of its violation as a civil penalty twice the amount of profits recovered or earned by any person, firm, or corporation during the period of such violation, and that a Committee of the Senate had announced that it proposed to pass this bill out without a public hearing, upon the ground that no public interest had been manifested in it. Chairman Gay moved that the Committee on Commerce be asked to make an immediate investigation of the proposals embodied in Senate Bill 2719, and that if in the judgment of the Committee it seemed to be in the public interest that the Committee should be heard for

the purpose of opposing the passage of such bill, the Committee be authorized by and with the approval of the Board of Governors to oppose the adoption of such legislation by the Congress.

Chairman Gay's resolution was unanimously adopted and telegrams were dispatched to the appropriate committees of Congress requesting that an opportunity be given for a public hearing upon the Bill in the event that it is to be considered at the present session of the Congress.

Resolutions Asked By President-Elect Beardsley Are Acted Upon

At the request of President-elect Beardsley, Arthur T. Vanderbilt, of New Jersey, moved a special order of business to consider five resolutions suggested by him in his address to the House. The first resolution was as follows:

"RESOLVED, that to the end that all committee appointments be made promptly, and to the end that the Annual Proceedings may be printed and made available for distribution and use with reasonable promptness, all copy for Committee lists to be printed in the Annual Proceedings be closed one month after the adjournment of the Annual Meeting, subject to the authority of the Board of Governors, for good cause, to provide for reasonable postponements of such closing date."

Jacob M. Lashly moved as an amendment that the time as limited be made sixty days instead of one month. On a rising vote the amendment prevailed, and the resolution as amended was thereupon adopted

The second resolution adopted was as follows:

"RESOLVED, that the tenure of members of all Associate and Advisory Committees, provided for in Section 1 of Article X of the By-laws, and of any and all other Committees the appointment of which is in the discretion of the President, terminate upon the adjournment of the Annual Meeting next succeeding the date of their appointment."

The third resolution offered at the request of the President-elect, was as follows:

"RESOLVED, that the tenure of all members of Standing and Special Committees, appointed by the President, be terminated upon the appointment by his successor of the number of members of such Committees that is authorized by the By-laws of the Association."

In view of the fact that the House of Delegates and the Board of Governors have for special purposes created Committees of more than five members, Mr. Ransom, of New York, moved to amend the resolution by adding the words "by the House of Delegates or by the Board of Governors." President-elect Beardsley stated that he had no objection to the amendment. The amendment was thereupon adopted and the resolution as amended was accepted by the House.

Discontinuance of Committees on Procedural Reform

Mr. Vanderbilt next offered the following resolution:

"RESOLVED, that all of the State Committees on Procedural Reform, authorized by the House of Delegates at the last Annual Meeting and appointed, by the President, be discontinued as of the date of adjournment of this Annual Meeting."

Roy C. Ledbetter, of Texas, opposed the resolution on the ground that the committees created were good, within each State, to urge the adoption of the procedural reforms recommended by the Association, and ought to be continued.

L. Stanley Ford, of New Jersey, thereupon asked:

"In those States which are not as progressive as California and Texas who is to carry the gospel to the Bar Association in an effort to carry out this important program of the American Bar Association?"

President-elect Beardsley replied to the question by saying that "when it comes to local legislation, our contact should be made directly with the State and Local Bar Associations and that we should not set up our own organizations in the States to duplicate or conflict with them.

Mr. Ford, of New Jersey, thereupon replied:

"My point is that in many of the States in these United States, there is no effective organization to carry on this important project of the American Bar Association. If the resolution were to give the President of the American Bar Association the discretion to appoint these Committees in these States only where needed, I would have no objection, but to do away with them entirely, I think is a grave mistake. If the program of this Association is to be carried forward, it must be done by Committees of this Association who will initiate these reforms in the States."

The resolution offered by Mr. Vanderbilt was thereupon put to a vote and the affirmative prevailed.

Mr. Vanderbilt offered the fifth resolution as follows:

"RESOLVED, that the House of Delegates recommends to the Chairman and Councils of all Sections of the Association that no Section Committee be authorized or appointed, the functions of which duplicate either the functions of another Section or the functions of a Committee of the Association, and that no Section Committee be appointed with more than five (5) members, being the standard size of Association Committees as fixed by the By-laws of the Association, save in exceptional cases in reference to which it is determined by the Council of the Section that a member of five (5) for the particular Committee is inadequate."

This resolution was adopted without opposition.

There being no further business requiring the attention of the House of Delegates at this Annual Meeting, adjournment was taken at 1:30 o'clock Friday afternoon. A number of matters of substantial importance, however, were reserved for the more adequate consideration available at the mid-winter meeting of the House, in Chicago next January.

ASSOCIATION'S OFFICIAL FAMILY—1939-40

AT the 1939 annual meeting of the Association, there were numerous changes in the officers and members of the "official family." No other nominations having been filed by petition, Charles A. Beardsley, of California, was unanimously elected President; Thomas B. Gay, of Virginia, Chairman of the House of Delegates; Harry S. Knight, of Pennsylvania, Secretary; John H. Voorhees, of South Dakota, Treasurer. Messrs. Gay, Knight and Voorhees were re-elections.

For the Board of Governors, George R. Grant, of Massachusetts, was elected from the First Circuit; Phillip J. Wickser, of New York, from the Second Circuit; Carl V. Essery, of Michigan, from the Sixth Circuit; and G. Dexter Blount, of Colorado, from the Tenth Circuit.

The Board of Governors re-elected Joseph D. Stecher, of Ohio, as Assistant Secretary, and Olive G. Ricker as Executive Secretary.

Dean Lloyd K. Garrison, of Wisconsin, was re-elected to the Board of Editors, of the JOURNAL.

Justice Edward T. Fairchild, of the Supreme Court of Wisconsin; William P. MacCracken, Jr., of the District of Columbia; and Edward Gluck, of New York, were re-named to constitute the Board of Elections.

The Assembly elected by ballot Robert F. Maguire, of Oregon, and Ambler H. Moss, of New Jersey, to fill vacancies as Assembly Delegates for the meeting.

Under the changed constitutional provision as to Assembly Delegates, the balloting in the Assembly resulted in the election of Walter P. Armstrong, of Tennessee; Ronald J. Foulis, of Missouri; William L. Ransom, of New York; and Arthur T. Vanderbilt, of New Jersey, all for two-year terms; Bert M. Kent, of Ohio; Robert F. Maguire, of Oregon; Nathan William MacChesney, of Illinois; and John Perry Wood, of California, as Assembly Delegates to the House of Delegates, for the one-year term.

Results of the choice of Officers and members of the respective Councils in the Section of the Association, and also the members of the Special and Standing Committees, as announced by President Beardsley, as follows:

Standing Committees

Admiralty and Maritime Law

CODY FOWLER, *Chairman*, Citizens Bank Building, Tampa, Fla.
GLENN J. FAIRBROOK, Central Building, Seattle, Wash.
FREDERICK L. LECKIE, Union Commerce Building, Cleveland, Ohio.
ESMOND PHELPS, United Fruit Building, New Orleans, La.
GEORGE C. SPRAGUE, 117 Liberty Street, New York City.

Aeronautical Law

MABEL WALKER WILLEBRANDT, *Chairman*, Shoreham Building, Washington, D. C.
LAURENCE W. BEILENSON, Title Guarantee Building, Los Angeles, Calif.
GEORGE B. LOGAN, 506 Olive Street, St. Louis, Mo.
FRANCIS B. UPHAM, JR., Chrysler Building, New York City.
J. E. YONGE, Dupont Bldg., Miami, Fla.

American Citizenship

5th Circuit—RALPH R. QUILLIAN, *Chairman*, Citizens & Southern Nat'l Bank Building, Atlanta, Ga.
1st Circuit—M. JAMES VIEIRA, 201 Thames Street, Newport, R. I.
2nd Circuit—ROBERT GRANVILLE BURKE, 50 Lafayette Street, New York City.
3rd Circuit—JOHN D. BENEDICT, 55 West Main Street, Waynesboro, Pa.
4th Circuit—AMBLER H. MOSS, Baltimore Trust Building, Baltimore, Md.
6th Circuit—EARL F. MORRIS, Huntington Bank Building, Columbus, Ohio.
7th Circuit—DONALD B. HATMAKER, Field Building, Chicago, Ill.
8th Circuit—JAMES J. FITZGERALD, Insurance Building, Omaha, Nebr.
9th Circuit—CARLISLE C. CROSBY, Central Bank Building, Oakland, Calif.
10th Circuit—A. PRATT KESLER, Public Safety Building, Salt Lake City, Utah.

Commerce

OSCAR C. HULL, *Chairman*, Dime Savings Bank Building, Detroit, Mich.
ERNEST ANGELL, 40 Wall Street, New York City.
J. EARLY CRAIG, Phoenix National Bank Building, Phoenix, Ariz.
THURLOW M. GORDON, 63 Wall Street, New York City.
JESSE R. SMITH, 1627 K St., N.W., Washington, D. C.

Communications

ROBERT N. MILLER, *Chairman*, Southern Building, Washington, D. C.
EDWIN M. BORCHARD, Yale Law School, New Haven, Conn.
CHARLES E. KENWORTHEY, Land Title Building, Philadelphia, Pa.
WHITNEY NORTH SEYMOUR, 120 Broadway, New York City.
BETHUEL M. WEBSTER, JR., 15 Broad Street, New York City.

Jurisprudence and Law Reform

6th Circuit—WALTER P. ARMSTRONG, *Chairman*, Commerce Title Building, Memphis, Tenn.
1st Circuit—JOSEPH F. O'CONNELL, 31 Milk Street, Boston, Mass.
2nd Circuit—HAROLD E. DREW, 272 Main Street, Derby, Conn.
3rd Circuit—FRED T. FRUIT, 56 East State Street, Sharon, Pa.
4th Circuit—CHARLES RUZICKA, First National Bank Building, Baltimore, Md.
5th Circuit—JAMES N. FLOWERS, 1505 North State Street, Jackson, Miss.
7th Circuit—ALBERT E. JENNER, JR., 11 South LaSalle Street, Chicago, Ill.
8th Circuit—HOWARD COCKRILL, Pyramid Building, Little Rock, Ark.
9th Circuit—CLINTON H. HARTSON, Alaska Building, Seattle, Wash.
10th Circuit—JAMES R. KEATON, Commerce Exchange Building, Oklahoma City, Okla.

Labor, Employment, and Social Security

WILLIAM L. RANSOM, *Chairman*, 33 Pine Street, New York City.
L. WARD BANNISTER, Equitable Building, Denver, Colo.
HENRY EPSTEIN, Department of Law, The Capitol, Albany, N. Y.
CLIF LANGSDALE, Scarritt Building, Kansas City, Mo.
DAVID A. MORSE, 60 Park Place, Newark, N. J.

Legal Aid Work

HARRISON TWEED, *Chairman*, 15 Broad Street, New York City.
EDMUND RUFFIN BECKWITH, 20 Exchange Place, New York City.
LAWRENCE DUMAS, JR., Massey Building, Birmingham, Ala.
CHRISTOPHER M. BRADLEY, Financial Center Building, San Francisco, Calif.
REGINALD HEBER SMITH, 60 State Street, Boston, Mass.

Professional Ethics and Grievances

H. W. ARANT, *Chairman*, Post Office Building, Columbus, Ohio.
WALTER L. BROWN, First Huntington National Bank Building, Huntington, W. Va.
HENRY S. DRINKER, JR., 1429 Walnut Street, Philadelphia, Pa.
ALBERT B. HOUGHTON, 152 West Wisconsin Avenue, Milwaukee, Wisc.
FREDERIC M. MILLER, State House, Des Moines, Ia.
ORIE L. PHILLIPS, Post Office Building, Denver, Colo.
WALBRIDGE S. TAFT, 14 Wall Street, New York City.

Resolutions

FREDERICK H. STINCHFIELD, *Chairman*, First Nat'l Soo-Line Building, Minneapolis, Minn.
(Twenty-one additional members will be appointed prior to the 1940 Annual Meeting.)

State Legislation

General Chairman, WILLIAM A. SCHNADER, Packard Building, Philadelphia, Pa.
Alabama—N. D. DENSON, JR., Opelika; JOHN L. GOODWYN, 22 S. Perry Street, Montgomery.
Arizona—CHARLES BERNSTEIN, Phoenix National Bank Building, Phoenix; W. E. PATTERSON, First National Bank Building, Prescott.
Arkansas—HOWARD COCKRILL, Pyramid Building, Little Rock; WALTER L. POPE, Gazette Building, Little Rock.
California—KEMPER CAMPBELL, Chapman Building, Los Angeles; GILFORD G. ROWLAND, Forum Building, Sacramento.
Colorado—EDWARD V. DUNKLEE, E. & C. Building, Denver; HILDRETH FROST, Independence Building, Colorado Springs.
Connecticut—DAVID E. FITZGERALD, Chamber of Commerce Building, New Haven; LAWRENCE A. HOWARD, 750 Main Street, Hartford.
Delaware—JOSIAH MARVEL, JR., Delaware Trust Building, Wilmington; WILLIAM J. STOREY, Dover.
District of Columbia—H. WINSHIP WHEATLEY, 1010 Vermont Avenue, Washington; ROGER J. WHITEFORD, Smith Building, Washington.
Florida—LUCIEN H. BOGGS, Bisbee Building, Jacksonville; J. VELMA KEEN, Tallahassee.
Georgia—R. W. CRENSHAW, Trust Company of Georgia Building, Atlanta; GRAHAM WRIGHT, Box 145, Rome.
Hawaii—DUDLEY C. LEWIS, Castle & Cooke Building, Honolulu; HEATON LUSE WRENN, Bank of Hawaii Building, Honolulu.
Idaho—FRANK MARTIN, Box 2178, Boise; EDWIN SNOW, Box 515, Boise.
Illinois—MICHAEL L. IGOE, U. S. Court House, Chicago; ISAAC S. ROTHSCHILD, 120 S. La Salle Street, Chicago.
Indiana—WALTER MYERS, Lemcke Building, Indianapolis; HARRY P. SCHULTZ, Lafayette Loan & Trust Building, Lafayette.
Iowa—ALEXANDER M. MILLER, Equitable Building, Des Moines; VINCENT STARZINGER, Bankers Trust Building, Des Moines.
Kansas—KIRKE W. DALE, 112½ W. Fifth Avenue, Arkansas City; RALPH T. O'NEIL, New England Building, Topeka.
Kentucky—THOMAS B. MCGREGOR, Frankfort; WALLACE MUIR, City Bank Building, Lexington.
Louisiana—PAUL M. HEBERT, Louisiana State University Law School, University; EDWIN LELAND RICHARDSON, Box 1582, Baton Rouge.
Maine—J. FREDERIC BURNS, Houlton; CLARENCE H. CROSBY, Dexter.
Maryland—WENDELL D. ALLEN, Calvert Building, Baltimore; PAUL F. DUE, Baltimore Life Building, Baltimore.
Massachusetts—JOHN E. HANNIGAN, 10 State Street, Boston; BENJAMIN LORING YOUNG, 75 Federal Street, Boston.
Michigan—ROSCOE O. BONISTEEL, Wolverine Building, Ann Arbor; JOSEPH W. PLANCK, Capital Bank Building, Lansing.
Minnesota—ALFRED W. BOWEN, State Office Building, St. Paul; ROLAND J. FARICY, First National Bank Building, St. Paul.
Mississippi—CECIL F. TRAVIS, Standard Life Building, Jackson; W. S. WELCH, First National Bank Building, Laurel.
Missouri—ALLEN MCREYNOLDS, Carthage; FRANK E. TYLER, Dwight Building, Kansas City.
Montana—EDMOND G. TOOMEY, Securities Building, Helena; RALPH G. WIGGENHORN, Electric Building, Billings.
Nebraska—RAYMOND M. CROSSMAN, First National Bank Building, Omaha; DON W. STEWART, Sharp Building, Lincoln.
Nevada—A. J. MAESTRETTI, Clay Peters Building, Reno; BRUCE R. THOMPSON, Box 787, Reno.
New Hampshire—RALPH E. LANGDELL, 45 Market Street, Manchester; ROBERT W. UPTON, Patriot Building, Concord.
New Jersey—ALBERT E. BURLING, West Jersey Trust Building, Camden; JOSEPH C. PAUL, 1180 Raymond Boulevard, Newark.
New Mexico—CLARENCE M. BOTTS, First National Bank Building, Albuquerque; J. O. SETH, First National Bank Building, Santa Fe.
New York—FRANK A. MCNAMEE, JR., 75 State Street, Albany; CHARLES W. WALTON, 90 State Street, Albany.
North Carolina—J. C. B. EHRINGHAUS, Security National Bank Building, Raleigh; BENNETT H. PERRY, Henderson.
North Dakota—GEORGE S. REGISTER, Box 343, Bismarck; FRED J. TRAYNOR, Mann Building, Devils Lake.
Ohio—JOHN C. HARLOR, Huntington Bank Building, Columbus; LAWRENCE C. SPEITH, Union Commerce Building, Cleveland.
Oklahoma—V. P. CROWE, First National Building, Oklahoma City; DAVID I. JOHNSTON, Commerce Exchange Building, Oklahoma City.
Oregon—ALLAN G. CARSON, U. S .National Bank Building, Salem; ROBERT L. SABIN, JR., Wilcox Building, Portland.
Pennsylvania—JOHN H. FERTIG, State Theatre Building, Harrisburg; EDWARD J. THOMPSON, Phillipsburg.
Rhode Island—HAROLD A. ANDREWS, Industrial Trust Building, Providence; HENRY C. HART, Hospital Trust Building, Providence.
South Carolina—PINCKNEY L. CAIN, Central Union Building, Columbia; E. W. MULLINS, Columbia National Bank Building, Columbia.
South Dakota—ROY D. BURNS, Security Bank Building, Sioux Falls; KARL GOLDSMITH, Pierre National Bank Building, Pierre.
Tennessee—FRANK M. BASS, American Trust Building, Nashville; WARDLAW STEELE, Ripley.
Texas—WILLIAM B. CARSSOW, Littlefield Building, Austin; W. O. REED, Texas-Pacific Railway Building, Dallas.
Utah—LYNN S. RICHARDS, 1403 E. South Temple, Salt Lake City; SAM D. THURMAN, Walker Bank Building, Salt Lake City.
Vermont—DEANE C. DAVIS, Miles Building, Barre; GEORGE L. HUNT, 43 State Street, Montpelier.

Virginia—GUY B. HAZELGROVE, 1001 East Main Street, Richmond; ROBERT R. PARKER, 115 Main Street, Appalachia.
Washington—EDWARD B. HANLEY, JR., American Bank Building, Seattle; L. L. THOMPSON, Puget Sound Bank Building, Tacoma.
West Virginia—WADE HAMPTON BALLARD II, Payne Building, Welch; ROBERT G. KELLY, Kanawha Valley Bank Building, Charleston.
Wisconsin—JOHN C. DOERFER, 7006 West Greenfield Avenue, West Allis; ROBERT B. L. MURPHY, 110 E. Main Street, Madison.
Wyoming—GEORGE F. GUY, 421 Hynds Building, Cheyenne; WILLIAM O. WILSON, Majestic Building, Cheyenne.

Unauthorized Practice of the Law

EDWIN M. OTTERBOURG, *Chairman*, 200 Fifth Avenue, New York City.
HENRY B. BRENNAN, 214 East Taylor Street, Savannah, Ga.
JOHN D. RANDALL, American Trust Building, Cedar Rapids, Iowa.
PAUL H. SANDERS, Duke University Law School, Durham, N. C.
FRED B. H. SPELLMAN, Box 299, Alva, Okla.

Special Committees

Administrative Law

O. R. MCGUIRE, *Chairman*, 1703 North Highland Street, Arlington, Va.
WALTER F. DODD, 30 North La Salle Street, Chicago, Ill.
RALPH F. FUCHS, Washington University School of Law, St. Louis, Mo.
EUGENE L. GAREY, 63 Wall Street, New York City.
JULIUS C. SMITH, Jefferson Standard Building, Greensboro, N. C.

Bar Journal Advertising

FRED B. H. SPELLMAN, *Chairman*, Box 299, Alva, Okla.
EMMA E. DILLON, Broad Street Bank Building, Trenton, N. J.
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W. E. STANLEY, First National Bank Building, Wichita, Kans.
MARTIN J. TEIGAN, 209 South La Salle Street, Chicago, Ill.

Bill of Rights

GRENVILLE CLARK, *Chairman*, 31 Nassau Street, New York City.
DOUGLAS ARANT, Comer Building, Birmingham, Ala.
ZECHARIAH CHAFEE, JR., Harvard Law School, Langdell Hall, Cambridge, Mass.
OSMER C. FITTS, Brattleboro, Vt.
LLOYD K. GARRISON, University of Wisconsin, Law School, Madison, Wis.
GEORGE I. HAIGHT, 209 South La Salle Street, Chicago, Ill.
MONTE M. LEMANN, Whitney Building, New Orleans, La.
ROSS L. MALONE, JR., White Building, Roswell, N. M.
BURTON W. MUSSER, Clift Building, Salt Lake City, Utah.
JOHN FRANCIS NEYLAN, Crocker First National Bank Building, San Francisco, Calif.
JOSEPH A. PADWAY, Tower Building, Washington, D. C.
CHARLES P. TAFT, 2ND, Dixie Terminal, Cincinnati, Ohio.

Cooperation Between the Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings

GILES J. PATTERSON, *Chairman*, Florida National Bank Building, Jacksonville, Fla.
ALFRED A. COOK, 20 Pine Street, New York City.
OSCAR HALLAM, Endicott Building, St. Paul, Minn.
JOHN G. JACKSON, 15 Broad Street, New York City.
HENRY I. QUINN, Woodward Building, Washington, D. C.

Customs Law

ALBERT MACC. BARNES, *Chairman*, 2 Rector Street, New York City.
FREDERICK W. DALLINGER, United States Customs Court, 201 Varick Street, New York City.
JOSEPH R. JACKSON, United States Court of Customs and Patent Appeals, Washington, D. C.
THOMAS M. LANE, 90 Broad Street, New York City.
GEORGE R. TUTTLE, 500 Sansome Street, San Francisco, Calif.

Economic Condition of the Bar

JOHN KIRKLAND CLARK, *Chairman*, 72 Wall Street, New York City.
GRANT B. COOPER, Richfield Building, Los Angeles, Calif.
JOHN M. DUNHAM, Grand Rapids National Bank Building, Grand Rapids, Mich.
JAMES D. FELLERS, First National Building, Oklahoma City, Okla.
ISADOR LAZARUS, 285 Madison Avenue, New York City.
JOHN M. NIEHAUS, JR., Central National Bank Building, Peoria, Ill.
EDWIN L. STERNE, Citizens & Southern National Bank Building, Atlanta, Ga.

Facilities of Law Library of Congress

CHARLES H. LEAVY, *Chairman*, House Office Building, Washington, D. C.
MARY AGNES BROWN, 4606-15th Street, Washington, D. C.
JOHN P. BULLINGTON, Esperson Building, Houston, Texas.
ARNOLD FRYE, 49 Wall Street, New York City.
CHARLES M. HAY, 506 Olive Street, St. Louis, Mo.

Judicial Salaries

WALTER S. FOSTER, *Chairman*, American Bank Building, Lansing, Mich.
ANNETTE ABBOTT ADAMS, Rowan Building, Los Angeles, Calif.
ALEXANDER B. ANDREWS, 239 Fayetteville Street, Raleigh, N. C.
ARTHUR W. BROUILLET, 785 Market Street, San Francisco, Calif.
JOHN D. HARRIS, Florida National Bank Building, St. Petersburg, Fla.
JOSEPH C. LAMY, 1 North La Salle Street, Chicago, Ill.
ESMOND PHELPS, United Fruit Company Building, New Orleans, La.

Judicial Selection and Tenure

JOHN PERRY WOOD, *Chairman*, 458 South Spring Street, Los Angeles, Calif.
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